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Capital for Communities –
Opportunities for People℠

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<u>*Via Electronic Submission*</u>

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue NW
Washington, DC 20551

ATTN: Federal Reserve Board of Governors – Docket No. R-1723 & RIN 7100-AF94

Dear Ms. Misback:

On behalf of Community Reinvestment Fund, USA, (CRF) I am pleased to share our comments on the Federal Reserve Board of Governors' Advance Notice of Proposed Rulemaking (ANPR) on modernizing the Community Reinvestment Act (CRA) regulatory and supervisory framework published in the *Federal Register* on October 19, 2020, (Vol. 85, No. 202). We appreciate the Federal Reserve's on-going efforts to solicit public comments on how to modernize the regulatory infrastructure of this important statute. The CRA is one of several landmark civil rights laws enacted to address systemic inequities in credit access. More than 25 years have passed since major changes were made to this groundbreaking act and the world has changed dramatically since that time. Developing a proposal to update the CRA framework must be done thoughtfully and with a focus on strengthening the regulations to meet the needs of low- and moderate-income (LMI) and minority communities if it is to effectively address the systemic inequities in credit access that persist today. We commend the Board and its staff for their dedication and diligence in preparing this comprehensive starting point for a stronger, more robust CRA framework.

Background

Community Reinvestment Fund, USA, a national Community Development Financial Institution (CDFI), is a leader in channeling resources from the capital markets to support community economic development and helping mission-driven organizations improve efficiency and build capacity. Our mission is *to empower people to improve their lives and strengthen their communities through innovative financial solutions*. For the past 33 years we have worked with community partners, investors, foundations, and financial institutions to deliver over $3 billion in loans, investments, and bonds, resulting in the creation or preservation of 145,000 jobs, the financing of nearly 19,600 affordable housing units and funding for a wide range of community facilities. Since its inception, CRF has funded more than 5,200 small business loans, over 2,500 of which were made to businesses owned by women or people of color. CRF has deployed resources in more than 1,000 communities in 49 states and the District of Columbia and served more than 1.9 million people.

CRF was founded on a vision of improving the lives of people living and working in economically challenged communities by providing access, in partnership with local community development organizations, to public and private sector resources throughout the country. We are best known as a financial innovator with expertise in adapting financing tools that connect underserved communities to new sources of capital including establishing the first secondary market for small business and affordable housing loans to supply liquidity to development finance agencies, CDFIs and other mission-driven lenders. We pioneered the creation of securities collateralized by community development assets to offer mainstream institutional investors (banks, pension funds, and insurance companies) with a way to invest capital at scale in projects and businesses serving low-income people and revitalizing distressed communities. Since 1989, CRF has issued 19 series of Notes totaling $284.7 million backed by community development loans. Three of our debt offerings totaling $176 million have been rated and all of which included a senior tranche rated "AAA" by Standard & Poor's. We have also issued three multifamily affordable housing securities, including one Standard & Poor's rated issue totaling $84.9 million, backed by 45 multifamily affordable housing loans.

Similarly, CRF played an instrumental role in shaping and launching key federal community development programs, including the New Markets Tax Credit (NMTC) and the CDFI Bond Guarantee Program (BGP). Together with its affiliate, National New Markets Tax Credit Fund, Inc., (NNMTCF), we have received $919.5 million in tax credits of which $889 million have been deployed in the form of flexible loans for both non-profit and for-profit operating businesses located in low-income communities throughout the country. Since 2003, we have made 340 Qualified Low Income Community Investments (QLICIs) with $889 million of deployed Qualified Equity Investments (QEIs).

In 2013, CRF was named the first Qualified Issuer (QI) for the CDFI Bond Guarantee Program. We are the only QI to issue bonds in seven of the eight funding rounds conducted to date, and our total issuance since 2014 stands at $940 million on behalf of eight CDFIs.

When faced with the dramatic contraction in bank lending during the Great Recession, CRF found a way to bring responsible credit to marginalized small businesses unable to secure conventional bank loans. We acquired one of 14 national non-depository SBA 7(a) licenses to offer this government guaranteed loan product to support our mission of lending to small businesses located in LMI areas or owned by people of color, women and/or veterans. Since launching our SBA 7(a) product in 2012, CRF has made more than 523 loans totaling over $282.5 million helping to create or retain nearly 12,500 jobs. With the onset of the COVID-19 pandemic, CRF used its SBA expertise and its proprietary loan origination software to originate Paycheck Protection Program Loans for a total of $519 million in closed loans which preserved 51,045 jobs. We also participated in an early and novel recovery loan fund in Chicago where we originated over 1,700 loans for over $43.8 million which retained 6,475 jobs and created 3,144 jobs. CRF is a Preferred Lender under the SBA 7(a) program and has been ranked among the top SBA 7(a) lenders nationally.

General Comments and Key Themes

The Federal Reserve Board of Governors (the Board) has produced a prodigious and thoughtful set of proposals to modernize the Community Reinvestment Act regulatory and supervisory framework. The ANPR reflects the extensive and far-reaching dialogue that has taken place over the last several years among all three bank supervisory agencies. The ANPR offers a firm foundation for a joint proposal from the Board, the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) to modernize and strengthen the CRA.

Before turning to specific questions raised in the ANPR, we wish to highlight key themes included in this document.

A stronger CRA framework is imperative given current challenges.

Given the tremendous challenges posed by the coronavirus pandemic, the economic devastation facing small businesses, particularly businesses owned by black indigenous and other people of color (BIPOC), and the national awakening to systemic racism, it is vital that modernizing the CRA framework increases the flow of capital and credit to LMI and communities of color across this country.

Several aspects of the ANPR are particularly encouraging and offer a solid foundation/basis for an enhanced CRA evaluation process and framework. The Board's proposed approach introduces greater transparency and objectivity into CRA examinations by tailoring performance evaluations to bank size, business model and local conditions, such as the special circumstances faced by small banks in rural areas. The ANPR proposes a metrics-based approach to the Retail and Community Development Tests (and subtests), while retaining a role for qualitative factors when they are best suited to evaluate bank performance. Striking the right balance between quantitative and qualitative criteria will lead to more consistent and comparable performance evaluations without sacrificing the impact of smaller scale community development activities.

In addition to improvements to performance measures, the Board proposes changes to delineating assessment areas (AAs) to ensure banks are held accountable for serving the credit needs of their communities. AAs sit at the heart of the evaluation process as they are the geographical basis for evaluating a bank's CRA performance. The Board proposes several useful approaches to expanding AAs to encompass the deposit-gathering and/or lending activities of internet and on-line banks (relying on digital channels) as well as hybrid financial institutions (combining branch and non-branch channels) while affirming and preserving the importance of branches in delineating AAs, particularly for smaller communities and rural areas where LMI consumers and small businesses depend on a bank's brick and mortar presence. Eliminating the distinction between full- and limited-scope AAs is a welcome concept as limited-scope areas receive far less attention in the current framework. Proposed changes to AAs prioritize local lending while addressing the technological changes that have reshaped the banking industry.

The Board also tackles the issue of what activities qualify for CRA consideration, a topic that has generated comments from both bank and community stakeholders. It is encouraging to see the ANPR retains the focus of qualifying activities on lending, investing and services that benefit LMI communities and individuals. One notable exception is the Board's consideration of potentially broadening eligibility for financial literacy and housing counseling activities to all income levels rather than restricting CRA consideration to those individuals or families who are low- or moderate-income. Providing CRA credit for financial education and literacy activities without regard to the income level of the beneficiaries runs counter to the purpose and the intent of the statute. That said, there are other populations who are also disadvantaged and should be included as acceptable beneficiaries of these financial education services. For example, people of color are more likely to lack access to formal banking services. An estimated 21.7 percent of black households are unbanked, Hispanics (19.3 percent), and American Indian/Alaskans (15.6 percent).[1] Disabled individuals are also more likely to lack access to the banking system.[2] These populations should be added as eligible beneficiaries. However, CRA qualified activities should remain targeted to LMI communities and individuals.

Finally, we are encouraged by the Board's proposals to expand data collected on community development (CD) activities. Generally speaking, CD financing data is woefully inadequate and CD services data is often inconsistent. These major data gaps limit peer comparisons as well as rigorous analyses of bank community development performance. Without CD financing data it will be impossible to develop the proposed new CD Financing metric descried in the ANPR. Data on deposit products for LMI customers and by income level of census tracts would provide insights as to how well banks are meeting the needs of LMI customers and could be used to build a database and inform future analyses.

<u>Retain and strengthen the nuance in CRA ratings.</u>

Currently, 98 percent of banks pass their CRA exams[3] and therefore, have little reason to expand their activities or seek to improve their ratings. While the Board proposes a number of positive changes to the current CRA framework, eliminating the distinction between "High" and "Low" Satisfactory ratings at the subtest level will discourage banks from increasing their CRA eligible activities to obtain a higher rating. Retaining the five ratings categories at the subtest level and exploring ways to distinguish ratings categories further would strengthen the framework and spur more CRA lending and investment in LMI and communities of color.

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[1] FDIC National Survey of Unbanked and Underbanked Households, December 2009, pg.3, https://www.fdic.gov/householdsurvey/2009/executive_summary.pdf
[2] Banking Status and Financial Behaviors of Adults with Disabilities: Findings from the 2015 FDIC National Survey of Unbanked and Underbanked Households, pg. 4, https://www.nationaldisabilityinstitute.org/wp-content/uploads/2018/12/banking-stat-fin-behav-2017.pdf
[3] House of Representatives, *Congressional Record,* June 26, 2020, pg. H2571.

<u>A revised framework must explicitly consider race to address credit inequities.</u>

If CRA is to meet its core purpose of addressing inequities in access to credit, a revised or modernized CRA framework must explicitly consider the issue of race as part of the evaluation criteria and metrics. As discussed in greater detail in Question 2, race must be embedded or built into the structure of the CRA framework. It must be considered as part of the various CRA tests and subtests so we can measure, assess, and determine whether communities and individuals of color are getting full and equal access to credit and capital.

Another way to increase access to capital for communities and individuals of color is to expand the role of *both* Minority Depository Institutions (MDIs) as well as CDFIs. These mission-driven financial intermediaries have the capacity and the knowledge to reach communities of color and their residents. We support the Board's effort to promote financial inclusion by proposing special provisions to increase investment in and CRA-related activities with Minority Depository Institutions (MDIs), along with women-owned financial institutions and low-income credit unions (collectively known as MWLIs), we urge that the same consideration be given to CDFIs. As noted throughout this letter (see Question 2, 64, 67 and 89), CDFIs and MWLIs serve virtually identical purposes, but were not formally recognized in statute until 1994, almost twenty years after the passage of the CRA.

Lastly, the Board should consider creating stronger incentives for banks to lend and invest in underserved areas, such as Indian Country and economically challenged areas which are highly correlated with communities of color, and which receive very low levels of CRA loans and qualified investments. These areas are often characterized as CRA "deserts."[4] because they lack the presence of a financial institution. (See also Questions 1 and 2)

<u>Implement a Uniform CRA Rule based on an Interagency Process</u>

For a revised CRA framework to be successful it must involve an interagency process where all three bank supervisory agencies agree to adopt and implement the same framework. The CRA must be a uniform regulation across all types of banks – this is fundamental to a healthy and sound banking system. Multiple frameworks will lead to confusion and conflicting incentives that could discourage collaboration at the local level and ultimately reduce the cooperation needed to make CRA projects feasible. The Federal Reserve, the OCC and the FDIC must converge around this ANPR and publish a unified NPR that will apply to all banking institutions in the country. This will strengthen the CRA regulatory framework and ensure that the statute is being implemented in a responsible and effective manner.

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[4] Federal Reserve Board of Governors, Community Reinvestment Act: Advance Notice of Proposed Rulemaking, Vol. 85 No. 202, October 19, 2020, pg. 66411. CRA deserts are areas with little bank presence and corresponding lesser availability of banking products and services and community development activities.

QUESTIONS

Section II - *CRA Background*

Question 1. Does the Board capture the most important CRA modernization objectives? Are there additional objectives that should be considered?

The Board captures objectives that are critical to strengthening and modernizing the Community Reinvestment Act regulatory framework. We offer comments on how several of these objectives could be broadened or refocused.

There can be no doubt that the first objective of ***addressing credit inequities and more effectively meeting the needs of LMI communities*** is paramount to furthering the CRA and its core purpose, especially as the country remains mired in the coronavirus pandemic. The confluence of two crises in our nation – a public health emergency and the economic devastation resulting from COVID-19 have disproportionately affected LMI neighborhoods, especially communities of color, revealing the enormous challenges faced by small businesses and households in these communities as they struggle to access credit to survive the pandemic. CRF wholeheartedly supports the core purpose of the CRA but given that the wealth gap was the same in 2016 as it was two years before the passage of the Civil Rights Act of 1964,[5] the CRA modernization objectives must focus on the people and places that suffer from intractable wealth and credit disparities. To this end, the Board should explicitly include as part of this objective or as a separate objective ***improving access to credit for communities and people of color to increase the availability of loans, investments, and services in these communities and to their residents.***

The Board also lists ***strengthening the special treatment of minority depository institutions (MDIs)*** as an objective recognizing the powerful role MDIs play in helping to improve access to credit for minority borrowers and people of color. Supporting and raising the visibility of these institutions to begin to redress the racial disparities underlying credit inequities is a worthy objective. However, by focusing exclusively on MDIs, the Board may be missing the opportunity to make more resources available to LMI and communities of color by broadening this objective to include another type of mission-oriented financial intermediary, Community Development Financial Institutions. CDFIs are “private financial institutions that are 100% dedicated to delivering responsible, affordable lending to help low-income, low-wealth, and other disadvantaged people and communities join the economic

[5] Dionissi Aliprantis and Daniel Carroll, Federal Reserve Bank of Cleveland, “What is Behind the Persistence of the Racial Wealth Gap” (Feb. 28, 2019), https://www.clevelandfed.org/newsroom-and- events/publications/economic-commentary 903-what-is-behind-the-persistence-of-the-racial-wealth-gap.aspx.

mainstream."[6] There are over 1,100 CDFIs lending, investing, and delivering educational and advisory services in LMI and communities of color across the country. They complement and augment the activities of their MDI counterparts as evidenced by the Board's proposals to provide beneficial CRA consideration to CDFIs elsewhere in the ANPR. The Board recognizes the importance of mission-oriented financial intermediaries in helping retail and community development financing reach LMI and minority individuals and communities and proposes ways to encourage more activities that support MDIs, CDFIs, and other mission-oriented financial institutions. In addition, the Board is considering whether to allow activities with CDFIs to be treated in the same fashion as activities with MDIs, women-owned financial institutions, and low-income credit unions. This would allow banks to receive CRA consideration for loans, investments, or services in conjunction with CDFIs anywhere nationwide. We respectfully urge the Board to broaden the objective of ***strengthening the special treatment of MDIs to apply to CDFIs*** to help address/rectify the enormous gap in access to credit facing people and communities of color.

It is heartening to see the Board's ***recognition that CRA and fair lending responsibilities are inextricably linked and mutually reinforcing.*** In addition to underscoring the importance of robust fair lending reviews, we are encouraged to see that reviews of deposit products are explicitly included for the first time. Abusive and predatory lending practices affect *all* communities but are often most pronounced in communities of color. This objective should be strengthened by incorporating assessments of lending, investments, and services in communities of color. This would enable the Board to gather critical data and insights about how to reduce racial credit and other inequities.

Increasing clarity, transparency and consistency related to CRA activities is another cornerstone objective of an enhanced CRA framework. Both banks and community stakeholders have struggled to understand how a community development project will be considered in a CRA examination. Reducing uncertainty and increasing predictability will foster collaboration and partnerships at the local level. The ANPR seeks feedback on a possible pre-approval process whereby financial institutions and community-based organizations could be assured a particular activity would receive CRA consideration. This process would strengthen this objective.

The Board's objective to ***promote community engagement*** preserves and enhances a fundamental element of the CRA. Public comments on the CRA performance of banks should be carefully considered and weighed as part of the examination process. With that in mind, it is incumbent on the Board to provide clear direction as to how the public can convey its comments and feedback on bank performance in keeping with the theme of transparency that is the hallmark of this ANPR.

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[6] Opportunity Finance Network, What is a CDFI?, https://ofn.org/whatcdfi#:~:text=Community%20development%20financial%20institutions%20(CDFIs,communities%20join%20the%20economic%20mainstream.

Tailoring CRA supervision of financial institutions to account for banks of different sizes, business models and serving different markets along with updating standards in light of changes to the banking landscape, including new technology-driven delivery channels, are smart, common sense objectives that will make the new CRA framework relevant and effective. These modifications are long overdue.

Finally, the Board should consider adding another objective of addressing ***the credit needs of underserved or economically distressed minority or rural communities to promote improved access to credit***. Certain geographical areas, such as Indian Country and many rural communities, have no banking presence and therefore receive very few CRA loans or investments. These areas, often referred to as CRA "deserts,"[7] remain starved for credit and lack the means under the current framework to attract bank CRA activity. While the ANPR lays out several ways to stimulate bank lending and investing in these places, the proposed incentives do not go far enough to incent the scale of CRA resources needed to meet the credit needs in these communities. The revised CRA framework should incorporate stronger inducements for banks to address the needs of these long-overlooked underserved and economically challenged communities.

Question 2. In considering how the CRA's history and purpose relate to the nation's current challenges, what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities?

As Governor Lael Brainard has noted, "The CRA is a seminal statute that remains as important as ever as the nation confronts challenges associated with the racial equity and the COVID-19 pandemic."[8] Since the passage of this Act more than 40 years ago, "the legacy of discriminatory lending and systemic inequity in credit access remains in evidence today."[9] As of 2019, Black-owned small businesses were only half as likely as White-owned businesses to obtain bank financing in the previous five years and the gap in homeownership rates between Black and White households remains significant today.[10]

The lack of progress in overcoming systemic racism and unequal access to credit for people and communities of color has been laid bare by COVID-19, the growing economic hardship, and the murder of George Floyd. The convergence of these three unprecedented crises has made CRA reform more important than at any other time in its history. There

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[7] Federal Reserve Board of Governors, Community Reinvestment Act: Advance Notice of Proposed Rulemaking, Vol. 85 No. 202, October 19, 2020, pg. 66411. CRA deserts are areas with little bank presence and corresponding lesser availability of banking products and services and community development activities.
[8] *Strengthening the CRA to Meet the Challenges of Our Time,* Speech by Lael Brainard at the Urban Institute, September 20, 2020, https://www.federalreserve.gov/newsevents/speech/brainard20200921a.htm
[9] Ibid.
[10] Ibid.

are several changes the Board could make to strengthen the CRA regulatory framework by speaking directly to the issue of systemic racial discrimination in access to credit as discussed in Question 1.

The Board asserts in the ANPR, "….the statute and its implementing regulations provide the agencies, regulated banks, and community organizations with the necessary framework to facilitate and support a vital financial ecosystem that supports LMI and minority access to credit and community development."[11] This being the case, the Board should make race an explicit consideration in modernizing the CRA framework. Unless and until lending, investing, and providing services to minority individuals and communities is measured and counted equal access to credit will remain elusive for people and places of color. Banks should be encouraged to interrogate their products, policies, and procedures to reduce hidden racial bias in lending and ensure compliance with fair lending practices. A review of these findings should be included in a bank's CRA performance evaluation. Uncovering hidden racial bias in lending will require the collection of new data points to document how the credit needs of people and communities of color are not being adequately addressed and to monitor progress in improving access to credit for these individuals and areas. Nevertheless, we believe including racial consideration of CRA activities will stimulate the flow of resources and private investment to the very communities and individuals still suffering from the legacy of redlining and discriminatory lending practices.

The Board should also strengthen the incentives in the revised framework for banks to expand their CRA lending, investing and services to underserved or economically challenged communities and especially communities of color. The ANPR takes some steps in the right direction by proposing to facilitate lending to and investments in minority depository institutions and providing additional credit for community development activities in underserved areas outside of a bank's assessment area(s), however, these incentives do not go far enough. Many underserved areas, such as Indian Country, confront daunting challenges when trying to access basic financial products and services. For instance, from 2014 to 2018, the total dollar amount of CRA small business and small farm lending per capita in majority-Native American or Alaska Native census tracts was less than half of what it was in majority-non-Hispanic White areas.[12] These areas are deemed to be credit deserts and cannot attract CRA loans or investments because

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[11] See, e*.g.,* Chairman Ben S. Bernanke, Board of Governors of the Federal Reserve System, "The Community Reinvestment Act: Its Evolution and New Challenges" (March 30, 2007), https://www.federalreserve.gov/newsevents/speech/Bernanke20070330a.htm ("After years of experimentation, the managers of financial institutions found that these loan portfolios, if properly underwritten and managed, could be profitable. . . . Moreover, community groups and nonprofit organizations began to take a more businesslike, market- oriented approach to local economic development, leading them to establish more-formalized and more-productive partnerships with banks. Community groups provided information to financial institutions on the needs of lower- income communities for credit and services, offered financial education and counseling services to community members, and referred 'bankable' customers to partner banks. Specialized community development banks and financial institutions with the mission of providing financial services and credit to lower-income communities and families emerged and grew.").

[12] Governor Lael Brainard, *Modernizing and Strengthening CRA Regulations: A Conversation with the National Congress of American Indians,* November 10, 2020.

banks simply are not present in these areas. The Board proposes financial institutions might receive CRA consideration for activities outside their assessment areas (AAs) assuming they have adequately met the credit needs of their AAs. Unfortunately, without stronger incentives it is unlikely that banks will significantly expand the scale of their lending and investment activity in these credit-starved areas.

The ANPR alludes to a third modification to the CRA regulatory framework that is essential given the nation's current challenges. The issue of climate change has been an imperative both in the United States and on a global scale. This issue has taken a particularly devastating toll on LMI and communities of color which lack the resources to prepare and respond to climate change and to deal with the attendant risks it poses to the health and wellbeing of their residents. Question 62 asks if the Board should include disaster preparedness and climate resilience as qualifying activities in certain targeted geographies? The answer to this question is a resounding "yes" and activities related to climate resilience (such as the reducing the amount of carbon emissions, improving the energy efficiency of residential or commercial buildings, moving to clean energy sources and away from fossil fuels, etc.) should be eligible for CRA consideration as long as these activities are serving LMI and/or people of color or communities representing these populations. But beyond simply providing CRA consideration for climate resilience activities, the Board must position the CRA to play a consequential role in encouraging banks to engage in these activities for the benefit of people and places that face the greatest risks (whether related to health, housing, food sources, or other critical needs) from the climate crisis. On December 15, 2020, the Federal Reserve Board announced it had formally joined the Network of Central Banks and Supervisors for Greening the Financial System.[13] This decision sends a clear signal that the Board acknowledges the risk climate change poses to the financial system. It should reflect the same concern in the revised CRA framework.

Section III – *Assessment Areas and Defining Local Communities for CRA Evaluations*

This section addresses the issue of how to define a bank's local communities, which impacts where banks' CRA performance is evaluated and is critical for ensuring that the CRA fulfills its purpose of encouraging banks to meet the credit needs of their local communities. The Board seeks to delineate assessment areas around physical locations more predictably, such as bank branches, and to ensure that assessment areas are contiguous, do not reflect illegal discrimination, do not arbitrarily exclude LMI census tracts, and are tailored to bank size and performance context. For large banks that conduct a significant amount of lending and deposit-based collection far from their branches, the

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[13] Federal Reserve Board of Governors, *Federal Reserve Board announces it has formally joined the Network of Central Banks and Supervisors for Greening the Financial System, or NGFS, as a member* (Press Release), December 15, 2020, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20201215a.htm.

Board seeks comment on deposit-based and lending-based alternative approaches to delineating assessment areas. For internet banks, the Board is also considering whether nationwide assessment areas could more holistically capture their banking activities.

Question 3. Given the CRA's purpose and its nexus with fair lending laws, what changes to Regulation BB would reaffirm the practice of ensuring that assessment areas do not reflect illegal discrimination and do not arbitrarily exclude LMI census tracts?

The primary purpose of Regulation BB is to ensure that regulated financial institutions adequately meet the credit needs of their entire communities, including LMI neighborhoods, in which they are chartered. The CRA was enacted specifically to address systemic inequities in access to credit as part of a reinforcing set of laws to expand financial inclusion and combat the practice of redlining. Given that Regulation BB requires that assessment areas do not allow for illegal discrimination and do not arbitrarily exclude LMI geographies, several changes could strengthen the existing framework.

First, we support the view shared by other organizations that predominantly minority census tracts should not be excluded from assessment areas. This should be made explicit in the new rules.

Second, the ANPR retains the requirement that assessment areas continue to be delineated where banks have a physical presence such as a branch or their headquarters. Branches must continue to play a central role in defining assessment area tracts contiguous to branches should also be included in AAs. In addition, the Federal Reserve should consider requiring a bank to include contiguous tract(s) where it conducts a significant portion of its lending activity.

Finally, clear, and readily accessible information on a bank's AAs should be part of its public file which should be easily located on its website. A list of current AAs should be made publicly available prior to the start of a new CRA exam cycle. A bank's AAs may change from one exam period to the next making it difficult for community stakeholders to know which areas are being evaluated for CRA performance. Identifying a bank's AAs would make it easy to detect if an institution is excluding LMI or predominantly minority census tracts. This approach would also provide an opportunity for banks to include underserved tracts or counties and highlight how they are addressing credit needs in these communities.

Question 4. How should the Board provide more clarity that a small bank would not be required to expand the delineation of assessment area(s) in parts of counties where it does not have a physical presence and where it either engages in a *de minimis* amount of lending or there is substantial competition from other institutions, except in limited circumstances?

The Board's proposal provides reasonable clarity as to when a small bank would not be required to expand the delineation of AAs in parts of counties where it does not have a physical presence, engages in a *de minimis* level of ending or where there is substantial competition from other institutions. However, these criteria should also include some means of confirming that a small bank is *not* engaged discriminating or arbitrarily excluding LMI census tracts. Perhaps a performance context analysis could be used to ensure a bank is not designating AAs to redline LMI or minority communities. In addition, there should be a means for the bank to affirmatively demonstrate with data that it is only engaged in a limited amount of lending in a particular county. If data reveals the bank is actively involved in lending in the specified county then the entire county should be included in its assessment area.

Question 5. Should facility-based assessment area delineation requirements be tailored based on bank size, with large banks being required to delineate facility-based assessment areas as, at least, one or more contiguous counties and smaller banks being able to delineate smaller political subdivisions, such as portions of cities or townships, as long as they consist of whole census tracts?

Yes, the approach outlined in the ANPR to delineate facility-based AAs based on bank size makes sense. It is particularly important for large banks to include full counties in their AAs as community groups report it is difficult, if not impossible, to conduct the data analysis needed to evaluate a bank's CRA performance on a portion of a county since the exam reports do not include a list of census tracts associated with these AAs.

The proposed approach for small banks described in Question 4 appears reasonable given more limited capacity and the need for an institution to focus on its service area. That said, any indications that an AA excludes LMI and/or minority census tracts or where lending volume is significant should be carefully reviewed to ensure the bank is not excluding geographies that should be included in its AA and to which it should be accountable. Given the importance of census tracts to conducting robust data analysis, we urge the Board to include a list of the tracts for AAs comprised of partial counties in CRA exam reports. This will also greatly improve the transparency of bank performance in these reports.

Question 6. Would delineating facility-based assessment areas that surround LPOs support the policy objective of assessing CRA performance where banks conduct their banking business?

Yes, delineating facility-based assessment areas that surround LPOs is an important step in capturing areas and communities banks are serving through their lending activities and ensuring they are affirmatively serving *all* members of their communities, including LMI and minority customers.

Question 7. Should banks have the option of delineating assessment areas around deposit-taking ATMs or should this remain a requirement?

Banks should continue to be required to delineate AAs around deposit-taking ATMs as making this an option could lead to areas being omitted even if they comprise a significant amount of a bank's business activity or a substantial portion of the local market share. For example, banks often choose to serve rural areas and small towns with ATMs only as it is more cost effective. Excluding these communities from AAs could create or exacerbate the problem of CRA hot spots and deserts making it even more difficult for these areas to attract CRA loans and investments. Thus, the Board should maintain the requirement that geographic areas surrounding an ATM to be delineated as an assessment area(s). Another option would be to place less weight in a CRA exam on an AA where an ATM generates a small number of deposits or where a bank has a low level of market share than on an AA where an ATM generates significant deposit gathering activity and the bank maintains a larger market share.

Question 8. Should delineation of new deposit- or lending-based assessment areas apply only to internet banks that do not have physical locations or should it also apply more broadly to other large banks with substantial activity beyond their branch-based assessment areas? Is there a certain threshold of such activity that should trigger additional assessment areas?

Delineation of new deposit- or lending-based AAs should apply to both internet banks that lack physical locations as well as other larger (or even smaller) banks that conduct substantial activity beyond their branch-based AAs through the use of technology. With the dramatic increase in the adoption of online and mobile banking, CRA must adapt or LMI and communities of color will continue to be left behind and systemic inequities in access to credit will widen. This is an area where innovative approaches to designating AAs is desperately needed. As more banks use a variety of channels to connect with their customers (depositors and borrowers), hybrid models of banking will proliferate. A new CRA framework needs to encourage the development of branchless bank models that demonstrate how internet and hybrid institutions can reach LMI people and underserved communities as well as a set of accompanying tools to hold banks accountable for making loans, investments and providing services to these people and places. *This is the true test of "modernizing" CRA.*

We understand that other bank supervisory agencies, such as the OCC, have developed potential approaches or methods for capturing data on lending and deposit gathering activities of non-traditional or hybrid banks needed to identify or designate geographic units (states, metropolitan areas, rural counties, etc.) for the purposes of a CRA exam. These efforts could be further developed or built upon.

As for the threshold of such activity that should trigger additional assessment areas, we believe this warrants additional research and study. The Board offered two thresholds based on number of loans (100 and 250) and another option based on percent (75%) of loans outside branch-based AAs. We are inclined to support the 100 loans threshold for delineating AAs for banks with activities outside of their branch network. Should this threshold prove to be too low, it could be increased subject to further review and testing.

Question 9. Should nationwide assessment areas apply only to internet banks? If so, should internet banks be defined as banks deriving no more than 20 percent of their deposits from branch-based assessment areas or by using some other threshold? Should wholesale and limited purpose banks, and industrial loan companies, also have the option to be evaluated under a nationwide assessment area approach?

The CRA is rooted in evaluating how a bank is serving credits needs at the local or community level. As banks are increasingly engaging with depositors and customers through mobile and online channels, it becomes more difficult to delineate AAs for CRA evaluation purposes. The Board raises an important question related to where internet-based, wholesale, and limited purpose banks should be evaluated. A nationwide assessment area seems to be a logical approach to identifying the geographic basis for assessing their CRA performance. However, nationwide AAs raise some serious questions for internet banks. For example, what kind of protections would the Board establish to prevent these banks from "cherry picking" more affluent areas or over LMI communities when offering retail loans or engaging in community development financing activities? Ultimately, all loans, investments and services are provided to customers at the local level which raises the question, "Is a nationwide AA option a reflection of the difficulty associated with accurately identifying the local, county, state or even regional AAs that internet banks are serving?" Further research into where these lenders are currently making loans could inform how to delineate state and local AAs. This effort could then be used to ensure that internet banks are not excluding LMI or minority communities from their AA as part of a the CRA exam process. One area for possible exploration is the degree to which these banks are able to reach sparsely populated areas that lack a bank presence. Better information could be used to not only designate AAs these banks are serving but also create models and incentives for these institutions to address the credit needs of underserved communities such as smaller towns and those located in rural areas.

Question 10. How should retail lending and community development activities in potential nationwide assessment areas be considered when evaluating an internet bank's overall CRA performance?

As noted in Question 9, there are still a number of unanswered questions regarding whether an internet bank should receive a nationwide AA designation. However, with that in mind, the current CRA framework does provide a model or precedent for nationwide consideration of community development activities in the case of wholesale or limited purpose banks. CRA exams of these institutions consider community development activities on a national basis if they have satisfied the credit needs in their AAs. Typically, wholesale and limited purpose banks tend to designate geographic areas around their headquarters as their assessment areas. This approach has led to creation of CRA hot spots. As part of the broader ANPR, the Board is considering how to treat community development activities outside of assessment areas to help address discrepancies between CRA hot spots and deserts. One alternative would be to define designated areas of need – such as Indian Country or areas that meet an "economically distressed" definition – where a bank could conduct community development activity outside of an assessment area. While the concept of "outside of an assessment area" is moot in the context of a nationwide AA, the approach of designating or identifying areas of need that internet banks could serve might be one way of considering community development activities when evaluating an institution's overall CRA performance.

Regarding retail lending activities, as noted in Question 9, there need to be additional measures taken to assure that internet banks receiving a nationwide AA will not seek to serve the more affluent communities with their credit products and refrain from lending in LMI or minority areas. In addition, it is critical to resolve how to effectively designate a nationwide AA for internet banks that captures both its retail lending and community development activities.

Section IV - *Overview of Evaluation Framework: Tailoring Evaluations Based on Bank Size and Business Model*

This section provides an overview of the Board's proposed framework for evaluating banks' CRA performance with a Retail Test and a Community Development Test. The Retail Test would include two subtests: a Retail Lending Subtest and a Retail Services Subtest. The Community Development Test would also include two subtests: a Community Development Financing Subtest and a Community Development Services Subtest. This section proposes tailoring these tests based on differences in bank asset size and business models. The Board proposes an asset-size threshold of $750 million or $1 billion to distinguish between small and large retail banks. Small retail banks could continue to be evaluated under the current CRA framework but would have the option to be evaluated under the Retail Lending Subtest alone and could also elect to have their retail services and community development activities evaluated. Large retail banks would be evaluated under all four subtests. Wholesale and limited purpose banks would be evaluated under the two community development subtests. Alternatively, any bank would have the option to be evaluated pursuant to an approved strategic plan.

Question 11. Is it preferable to make the default approach for small banks the current framework, with the ability to opt into the metrics-based approach, as proposed, or instead the metrics-based approach, with the ability to opt out and remain in the current framework?

In our view, all banks should be assessed under the same performance evaluation framework in order to increase simplicity and consistency of CRA exams. With this objective in mind, a transition period to allow small banks to become familiar with new regulations and make any necessary changes to their processes and procedures would facilitate the adoption of the metrics-based framework. If the transition period revealed issues or problems specific to small banks, then bank supervisory agencies would have a chance to address them (assuming they do not require regulatory changes). After a reasonable transition period, small banks would be examined under the same CRA rules as applied to larger institutions. There is general consensus that for the purposes of greater clarity, consistency, and transparency, a revised CRA framework needs to incorporate a set of standardized metrics with minimal thresholds that banks must meet or exceed to achieve the presumption of a Satisfactory performance. The goal of modernizing the CRA is to apply a thoughtful metrics-based framework (that also considers qualitative or performance context factors) to all banks rather than creating a two-tiered system based on asset size.

Question 12. Should small retail banks that opt into the proposed framework be evaluated under only the Retail Lending Subtest? Should large retail banks be evaluated under all four subtests: Retail Lending Subtest, Retail Services Subtest, Community Development Financing Subtest, and Community Development Services Subtest?

Small retail banks that opt in or transition into the proposed CRA framework should be primarily evaluated under the Retail Lending Subtest. However, consistent with the current approach, small banks should retain the option to engage in community development activities and submit these activities for CRA consideration. Examiners should apply the metrics used in the Community Development Test to evaluate the quantitative and qualitative performance or impact of these activities when considering whether they warrant additional points. The Retail Lending Test remains paramount for small retail banks.

Large retail banks should be evaluated under the Board's four proposed subtests: Retail Lending; Retail Services Community Development Financing; and Community Development Services; which mirrors the approach in the current framework.

Question 13. Is $750 million or $1 billion an appropriate asset threshold to distinguish between small and large retail banks? Or should this threshold be lower so that it is closer to the current small bank threshold of $326 million? Should the regulation contain an automatic mechanism for allowing that threshold to adjust with aggregate national inflation over time?

Before raising the asset threshold to distinguish between small and large retail banks, the Board should provide information about how many institutions this change would affect. Specifically, if the threshold were raised to $750 million or $1 billion, how many retail banks currently evaluated under the Community Development Tests (Lending, Investment, and Services) would no longer be required to engage in these activities and what is the dollar volume of lending and investing that would be lost to LMI and minority communities? These small banks are most likely located in and serving rural areas and small towns. They are a critical source of capital for community development activities that would simply disappear without the incentive to meet bank CRA requirements. Moreover, the staff at these small banks have developed the expertise and the partnerships to deliver these community development loans and qualified investments. This knowledge and these relationships are valuable community assets that cannot easily be replaced or replicated. Raising the asset threshold for a small bank could jeopardize a significant amount of resources available to revitalize and sustain underserved communities and their residents. The loss of these resources could lead to the creation of more CRA deserts, especially in rural towns where a small bank may be the only financial institution in the community. Finally, raising the asset size threshold would further consolidate community development financing in larger institutions that lack a deep understanding of how a small loan or investment can have a high impact in some communities and rural areas. The Board should study the potential effects of increasing the asset size threshold in terms of: (1) the number of banks that would no longer be subject to the Community Development Test; (2) the dollar volume of community development financing that would potentially be lost; (3) the types of communities most likely to experience a significant decrease in this financing; and (4) potential growth in CRA deserts that might result from this change.

Section V - *Retail Test: Evaluation of Retail Lending and Retail Services Performance*

This section describes the two subtests of the proposed Retail Test. For the Retail Lending Subtest, the Board proposes a metrics-based approach that is tailored based on a bank's major product lines and on the credit needs and opportunities within its assessment area(s). For the Retail Services Subtest, the Board proposes a qualitative approach that is intended to provide greater predictability and transparency for evaluating important aspects of retail banking services, including branches, other delivery systems, and deposit products.

Question 14. Is the retail lending screen an appropriate metric for assessing the level of a bank's lending?

Yes, the retail lending screen is an appropriate metric for assessing the level of bank's lending. This screen would serve as a tool to assess a bank's retail lending relative to its capacity to lend in an AA to determine whether it is eligible for a presumption of "satisfactory" using the retail lending distribution metrics (geographic and borrower), or whether it should be evaluated by an examiner. A bank that exhibits a low level of retail lending relative to its level of deposits would not receive a presumption of "satisfactory." Instead, examiners would review the institution's aggregate lending, geographic distribution, and borrower distribution in combination with performance context and qualitative aspects of performance.

In each AA, the retail lending screen would measure the average annual dollar amount of a bank's originations and purchases of retail loans in the numerator relative to its deposits in the denominator. The retail lending screen would be compared to a market benchmark that reflects the level of retail lending by other banks in the same AA with a similar level of deposits. To account for different business strategies (e.g., portfolio lenders versus those that sell them into the secondary market), the Board has proposed setting the threshold for the retail screen at a low level, such as 30 percent of the market benchmark. We believe the specific threshold level for the retail lending screen warrants further consideration by the Board to balance the need for a reasonable ratio of lending to deposits in a given AA with the need to accommodate different portfolio management strategies.

Question 15. Are the retail lending distribution metrics appropriate for all retail banks, or are there adjustments that should be made for small banks?

The retail lending distribution metrics are appropriate for all retail banks (both large and small) given that the current CRA framework already uses such distribution metrics to assess the geographic and borrower distributions of banks' lending activities. Small banks outperform larger institutions in making retail loans such as small business loans. "Although small and mid-sized banks ($10 billion or less in assets) control only 22 percent of all bank assets, they account for 54 percent of small business lending. Big banks, meanwhile, allocate relatively little of their resources to small businesses. The largest 20 banks, which now command 57 percent of all bank assets, devote only 18 percent of their commercial loan portfolios to small business."[14] This trend has increased in recent years and has been reinforced in the midst of the pandemic. The roll out of the Paycheck Protection Program (PPP) underscored the critical role of small banks in getting loans out to small businesses. According to the SBA, small lenders with less than $10 billion in assets accounted for 60 percent of the PPP loans, and lenders with less than $1 billion accounted for one-fifth of all PPP loan dollars disbursed in the first round.[15] While large lenders caught up with their smaller peers, community banks have deep knowledge of and relationships with their customers at the local level that enable them to make loans large institutions deem to be uneconomic. No adjustments should be made to the retail lending distribution metrics for small banks.

Question 16. Should the presumption of "satisfactory" approach combine low- and moderate-income categories when calculating the retail lending distribution metrics in order to reduce overall complexity, or should they be reviewed separately to emphasize performance within each category?

The Board proposes combining income levels and retail product types (except consumer loans) into single categories to reduce complexity when determining a presumption of "satisfactory." This approach would be a change from current practice where examiners separately evaluate a bank's performance in each income category (low-, moderate-, middle-, and upper-); each loan category within a product line (*e.g.,* home purchase loans, home refinance loans); and for each year. As the Board notes in the ANPR, "Combining low- and moderate-income categories together could potentially reduce the focus on lending in low-income census tracts and to low-income borrowers relative to lending to moderate-income tracts and moderate-income borrowers."[16] A drawback to aggregating retail products into a single category or group is the loss of granular data. For example, combining all home mortgage

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[14] *Why Small Banks Make More Small Business Loans*, Stacy Mitchell, Institute for Local Self Reliance, February 10, 2010, https://ilsr.org/banks-and-small-business-lending/

[15] *Small Banks Save Small Businesses, So Why Aren't There More Small Banks?*, Alliance for Local Economic Prosperity, Oscar Perry Abello, May 12, 2020, https://aflep.org/small-banks-save-small-businesses-so-why-arent-there-more-small-banks/
[16] Federal Reserve Board of Governors, Community Reinvestment Act: Advance Notice of Proposed Rulemaking, Vol. 85 No. 202, October 19, 2020, pg. 66422.

lending products into one group could obscure the evaluation of home purchase lending when lumped in with home refinance loans, particularly when levels of home mortgage refinancing increase.[17] Aggregating income levels and product types would be a step backwards given that examiners currently review a bank's performance based on separate income and loan categories for each year. The benefits of reducing complexity associated with this approach are outweighed by the disincentives for banks to target the credit needs of low-income tracts and borrowers and the loss of valuable data. One possible exception might be for smaller banks with limited loan volume over a CRA exam cycle where there would be minimal benefits to a review by individual income levels and product types.

Question 17. Is it preferable to retain the current approach of evaluating consumer lending levels without the use of standardized community and market benchmarks, or to use credit bureau data or other sources to create benchmarks for consumer lending?

It is critical that CRA exams capture and evaluate a bank's consumer lending activities if these activities exceed the thresholds established for major product categories or lines. Safe and appropriate consumer loans offer LMI customers an opportunity to meet their credit needs, build a credit history, and eventually build wealth. However, the proliferation of payday and other abusive or high-cost loan products has led to financial devastation for many low-income individuals and families. It is incumbent on the Board (and other bank supervisory agencies) to ensure that *only* reputable, fair, responsible lending products are considered for positive credit in a CRA exam. To ensure consumer loan products are properly evaluated, CRA exams must consider qualitative criteria, such as how responsive these products are to the credit needs of LMI consumers and how they help LMI borrowers overcome the traditional barriers they face when trying to obtain a loan. If, on the other hand, examiners uncover information that a bank is engaged in abusive or unscrupulous consumer lending practices, such as charging excessive interest rates, imposing hidden fees, or misleading customers about the actual cost of a credit product, this should be considered grounds for a ratings downgrade. The option of using credit bureau or other commercially available data merits further examination if the Board is not able to develop a standardized market benchmark due to the limitations of existing CRA data. While this would not address the issue of developing a borrower distribution metric for consumer lending (i.e., benchmark for LMI borrowers), it would advance efforts to create a metrics-based approach across all types of retail credit products.

Question 18. How can the Board mitigate concerns that the threshold for a presumption of "satisfactory" could be set too low in communities underserved by all lenders?

While the thresholds will be calibrated for individual assessment areas, the Board recognizes the possibility of setting thresholds too low in areas where credit markets are underserving LMI census tracts, LMI borrowers, or both, and

[17] Ibid.

perpetuating this situation by allowing banks to receive a presumption of "satisfactory" in communities with significant unmet credit needs. An approach that sets performance standards too low could fail to fulfill one of the core purposes of CRA, which is to encourage banks to serve LMI communities.[18]

One possibility would be to take the higher of the two thresholds for the community benchmark or the market benchmark rather than the lower of the two as the Board has proposed. Some stakeholders have suggested comparing affordability indices, where they exist, and aggregate lending trends to determine if an AA is underserved and might require a higher threshold. A third option might be to weight each of the benchmarks to come up with a blended threshold level. Finally, the Board might consider developing a process to identify underserved communities and review the thresholds for a presumption of "satisfactory" after the first exam cycle to determine if the threshold has been set too low and needs to be adjusted upward.

Question 19. Would the proposed presumption of "satisfactory" approach for the Retail Lending Subtest be an appropriate way to increase clarity, consistency, and transparency?

The proposed presumption of "satisfactory" approach for the Retail Lending Subtest could offer increased clarity, consistency, and transparency to the CRA evaluation process. However, as noted in Question 18, the threshold for such a presumption must be set appropriately to ensure it is a meaningful building block of the proposed revised CRA framework. In addition, as described in Question 16, aggregating income levels and product types into single categories could obscure lending patterns by reducing the granularity of the data collected. This could decrease transparency and thus the benefits associated with this approach.

We strongly support the Board's proposal to require banks to meet the binding thresholds not only for both distribution metrics for a specific product line, but also across all retail lending product lines evaluated under the Retail Lending Subtest in order to receive a presumption of "satisfactory".[19] We also believe it is important to retain the ability to rebut a presumption of "satisfactory" should examiners discover violations of fair lending laws and/or evidence of discriminatory lending practices.

Question 20. Is the approach to setting the threshold levels and a potential threshold level set at 65 percent of the community benchmark and at 70 percent of the market benchmark appropriate?

The Board has conducted a thorough and data-driven analysis based on its CRA Data Analytics Tables which include data from a random sample of approximately 6,300 performance evaluations from 2004 to 2017. The approach, though sound, does raise a number of questions. If the goal (among others) is to encourage banks to increase their

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[18] Ibid.pg. 66424.
[19] Ibid.

CRA activities, is setting threshold levels based on past data the most appropriate approach? Some stakeholders have raised concerns about grade inflation with upwards of 90 percent of banks receiving a "satisfactory" rating.[20] Will this method for establishing threshold levels simply replicate the same outcome that may be flawed if, in fact, CRA ratings are inflated? As suggested, the Board might consider using the higher of the two benchmarks (community or market) rather than the lower one to avoid creating an unintentional incentive for banks to reduce their lending to LMI borrowers and communities. Alternatively, the Board could develop a weighted average of the two thresholds rather than choosing either the lower or higher of the two.

As for the specific percentages proposed by the Board (65 and 70 percent for the community and market benchmarks respectively), it is difficult to say if these are the appropriate threshold levels. Once these benchmarks are calibrated (multiplied by) the fixed percentages, the thresholds may be quite small if overall lending in LMI communities or to LMI borrowers is relatively low in an AA. Again, the Board may wish to revisit these fixed percentages if they result in banks' CRA lending activities stagnating or declining over time.

One noteworthy aspect of the Board's proposal is the inclusion of *all* mortgage lenders, not just depository institutions, in calculating the market benchmark for mortgage lending.[21] Including non-bank lenders in peer comparisons is an improvement since these lenders play a significant role in serving LMI customers and hold a substantial market share. Implementing a similar approach for small business lending would be highly beneficial if the necessary data are available.

Question 21. Will the approach for setting the presumption for "satisfactory" work for all categories of banks, including small banks and those in rural communities?

According to the Board's analysis, the approach for setting the presumption for "satisfactory" will work for all categories of banks, including small banks and those in rural communities.[22] Moreover, as stated in the ANPR, this approach also works across different economic or business cycles as well as a variety of geographies. While we are not able to verify or confirm their analysis, the Board's methodology appears sound and rigorous. In addition, studies have demonstrated that small banks often make a higher percentage of home mortgage and small business loans to LMI borrowers and in LMI tracts than larger banks, so these institutions do not need special accommodations

[20] Josh Silver and Jason Richardson, *Do CRA Ratings Reflect Differences In Performance: An Examination Using Federal Reserve Data,* May 2020, https://www.ncrc.org/do-cra-ratings-reflect-differences-in-performance-an-examination-using-federal-reserve-data/
[21] Federal Reserve Board of Governors, Community Reinvestment Act: Advance Notice of Proposed Rulemaking, Vol. 85 No. 202, October 19, 2020, pg. 66423.
[22] Ibid, pg. 66427.

institutions.[23] Rural communities, however, may require special consideration, as there may be few LMI census tracts in sparsely populated areas. If this is the case, the Board may need to develop other means of identifying underserved areas.

Question 22. Does the performance ranges approach complement the use of a presumption of "satisfactory"? How should the Board determine the performance range for a "satisfactory" in conjunction with the threshold for a presumption of "satisfactory"? How should the Board also determine the performance ranges for "outstanding," "needs to improve," and "substantial noncompliance".

In our view, the performance ranges approach does complement the use of a presumption of "satisfactory" by providing additional clarity and detail about a bank's performance on the Retail Lending Subtest. Performance ranges add additional level of insight and provide a more nuanced picture of an institution's retail lending activities. Another positive aspect of performance ranges is that unlike the presumption test which combines low- and moderate-income groups for each distribution metric, they would assess performance separately for these two groups of borrowers providing more granular information on how a bank is serving LMI people.[24] The Board is also proposing to compute a weighted average of various components of the retail lending distribution metrics to reach an overall rating for a bank's performance in an AA. This approach balances an assessment of a bank's retail lending activities without allowing strong performance in one area to mask poor performance in another area. Another potential benefit of performance ranges is that they may inspire banks to increase their CRA activities in order to obtain a higher rating. Finally, it is extremely encouraging to see targeted performance context and qualitative aspects of performance incorporated into the approach to performance ranges. Qualitative factors, particularly those related to performance context, are critical to a full understanding of a bank's CRA activities, as we stressed in our comment letter to the OCC and the FDIC regarding their Joint Notice of Proposed Rulemaking.[25]

We do not offer specific recommendations as to how the Board should set performance ranges for each of the stated ratings categories. However, as noted in Question 20, the question of why more than 90 percent of banks receive a "satisfactory" rating should be considered as the Board establishes these performance ratings.[26] The best approach

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[23] Josh Silver and Jason Richardson*, Do CRA Ratings Reflect Differences In Performance: An Examination Using Federal Reserve Data,* May 2020, https://www.ncrc.org/do-cra-ratings-reflect-differences-in-performance-an-examination-using-federal-reserve-data/

[24] Federal Reserve Board of Governors, Community Reinvestment Act: Advance Notice of Proposed Rulemaking, Vol. 85 No. 202, October 19, 2020, pgs. 66427 – 66428.

[25] Community Reinvestment Fund, USA Comment Letter to the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation on Community Reinvestment Act, Joint Notice of Proposed Rulemaking – Docket ID OCC-2018-0008, March 20, 2020.

[26] Josh Silver and Jason Richardson*, Do CRA Ratings Reflect Differences In Performance: An Examination Using Federal Reserve Data,* May 2020, https://www.ncrc.org/do-cra-ratings-reflect-differences-in-performance-an-examination-using-federal-reserve-data/

may be to test a set of performance ranges and revisit them to see how well they have worked within the context of the revised CRA framework. In addition, some stakeholders have advocated for retaining five ratings categories (Outstanding, High Satisfactory, Low Satisfactory, Needs to Improve, and Substantial Noncompliance) for the subtests rather than combining the two Satisfactory ratings into a single ratings category. They argue that five ratings provide greater insight into a bank's performance and could incent an institution to increase its CRA activities to achieve a higher rating. The Board should carefully consider retaining the five ratings categories if it truly seeks to encourage banks to increase their efforts to better serve the credit needs of LMI people and underserved areas.

Question 23. Should adjustments to the recommended conclusion under the performance ranges approach be incorporated based on examiner judgment, a predetermined list of performance context factors, specific activities, or other means to ensure qualitative aspects and performance context are taken into account in a limited manner? If specific kinds of activities are listed as being related to "outstanding" performance, what activities should be included?

Performance context factors and other qualitative factors have an important complementary role to play in a metrics-based CRA evaluation process. Properly incorporating these factors requires that examiners exercise a certain degree of discretion in the examination process. Determining the proper level of examiner discretion remains an "art" rather than a "science." Limited adjustments to the recommended conclusion or rating under the performance ranges approach may be in order based on qualitative factors, however, we do not favor the use of a pre-determined list of performance context factors or specific set of activities as the basis for such adjustments. Rather, examiners should ensure transparency by clearly describing the qualitative criteria or factors they considered, the rationale for including these criteria, and the weight they placed on such criteria in making an adjustment to conclusion or rating.

Question 24. In addition to the number of branches and the community and market quantitative benchmarks discussed above, how should examiners evaluate a bank's branch distribution?

CRF is pleased to see the Board's proposal retains key elements of the current retail services test and seeks to strengthen this test by adding a separate deposit product test. Branches remain a vital resource for LMI consumers and small businesses to access credit and other services. The Federal Reserve's own research findings confirmed that CRA requirements have led to a lower risk of branch closure, particularly in neighborhoods with fewer branches and in major metropolitan areas.[27] While the distribution of branches is critical to serving the needs of LMI communities and people, it is also important to assess other factors such as the opening and closing of branches,

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[27] Lei Ding and Carolina Reid, *The Community Reinvestment Act (CRA) and Bank Branching Patterns*, Federal Reserve Bank of Philadelphia, Working Papers, WP 19-36, September 2019, https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2019/wp19-36.pdf.

(particularly in LMI and communities of color), the range of services provided (including hours of operation and bilingual services) to assure banks are meeting the convenience and needs of LMI tracts and customers.

The ANPR strengthens the proposed Retail Services Subtest with the introduction of new quantitative measures, known as the community and market benchmarks, which incorporate data specific to individual AAs that allow examiners to determine whether branches are accessible to LMI communities, customers, and small businesses. These measures provide a quantitative underpinning or foundation that will improve transparency and standardize how examiners assess a bank's branch distribution. The Board has wisely decided not to create thresholds for branch distribution assessment understanding that AAs can vary significantly. Examiners may also exercise discretion in how performance context is considered preserving a role for qualitative factors. The ANPR recognizes a bank with a small number of branches may be better suited to a qualitative distribution analysis and will consider this issue further. Beyond providing stronger examiner guidance, we do not have specific recommendations regarding the evaluation of a bank's branch distribution.

Question 25. How should banking deserts be defined, and should the definition be different in urban and rural areas?

The notion of giving additional credit to a bank operating a branch in a banking desert in its AA is worthy of further exploration. Areas lacking a bank presence, be it a physical presence such as a branch or ATM or the absence of bank lending and/or deposit gathering, have little or no way to attract CRA activities. The Board is asking the right questions – most importantly – how to define a banking desert beyond simply identifying geographic areas where banks do not maintain a physical presence or conduct lending or deposit taking activities. It might be useful to define a banking desert as a geographic area that lacks a specific number of branches and/or lending or deposit taking activity. As bank branches are more numerous in urban neighborhoods as compared to rural areas, separate definitions would be helpful in distinguishing urban and rural areas that lack an adequate supply of banking services and therefore should be considered to be a banking desert.

Question 26. What are the appropriate data points to determine accessibility of delivery systems, including non-branch delivery channel usage data? Should the Board require certain specified information in order for a bank to receive consideration for non-branch delivery channels?

The Board's efforts to identify the appropriate data points to determine accessibility of delivery systems, especially non-branch channels, are a welcome aspect of the ANPR. With the onset of the coronavirus, customers are increasingly turning to mobile and online banking channels. These trends will not be reversed when the pandemic recedes. Under the current evaluation framework banks provide limited and inconsistent data about their non-branch delivery channels. If CRA is to effectively assess the ability of a bank's delivery systems to meet the credit needs of the communities where it is chartered to do business, and in particular, those of LMI and minority communities, it will require a robust data set. Bankers cite the need to maintain or protect proprietary data as a key obstacle to more and better data. The security of personally identifiable data may also be a concern for both bankers and customers. We encourage the Board to investigate ways that data related to online usage and derived from mobile devices could be aggregated and/or anonymized for security and proprietary purposes.

The Board has identified a number of the key data points in the ANPR, including, rates of usage of online and mobile services by customers in individual census tracts, and rates of usage by customers in individual census tracts for different types of ATMs offered by a bank.[28] It would also be useful to obtain these same data points grouped by income level to ascertain how LMI customers are being served. One factor that could affect access to online and mobile channels is the availability of consistent broadband and internet services, in both rural and poor inner-city areas. Connectivity issues may distort rates of usage among customers in areas that lack a strong technology infrastructure. Capturing data on this problem may shed light on the accessibility of a bank's delivery systems.

One area not well developed in the current retail services test is the cost associated with deposit accounts. Banks are encouraged to offer low-cost deposit accounts and new digital delivery systems are revolutionizing the cost of providing such accounts. A revised CRA evaluation framework offers an opportunity to revisit this issue, particularly because low-cost accounts could bring many un- or underbanked LMI customers into the mainstream financial system. More focus and information describing the comparative costs of low-fee deposit accounts that banks offer through their online and mobile delivery channels would enhance the Retail Services Subtest in a new CRA rule.

Question 27. Should a bank receive consideration for delivering services to LMI consumers from branches located in middle- and upper-income census tracts? What types of data could banks provide to demonstrate that branches located in middle- and upper-income tracts primarily serve LMI individuals or areas?

Banks should not receive consideration for delivering services to LMI consumers from branches located in middle- and upper-income census tracts. This would defeat the purpose of encouraging banks to serve LMI customers in the communities where they live and work. Branches have ancillary benefits for the communities where they are located and can serve as an anchor for business corridor revitalization. If a bank is serving LMI customers at branches outside LMI census tracts through other offerings such as deposit accounts, these activities will be captured in the deposit products component the Board proposed as part of the Retail Services Subtest.

Question 28. Would establishing quantitative benchmarks for evaluating non-branch delivery channels be beneficial? If so, what benchmarks would be appropriate?

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[28] Federal Reserve Board of Governors, Community Reinvestment Act: Advance Notice of Proposed Rulemaking, Vol. 85 No. 202, October 19, 2020, pg. 66432.

In theory establishing quantitative benchmarks for evaluating non-branch delivery channels would be beneficial. The challenge, as noted in Question 26, is the lack of robust and consistent data on these delivery channels. When meaningful data is available, then the Board should establish quantitative benchmarks that could be used to compare the performance of a bank to its peers.

Question 29. What types of data would be beneficial and readily available for determining whether deposit products are responsive to needs of LMI consumers and whether these products are used by LMI consumers?

CRF strongly supports the Board's effort to elevate and strengthen the evaluation of deposit products that are responsive to the needs of assessment areas, and particularly the needs of LMI communities and consumers. According to the ANPR, the availability, costs, and account features of these products will be evaluated to determine how well they are tailored for the needs of LMI consumers. The Board is also considering ways to assess the usage and impact of these products. While the effort to assess deposit products will require more data and new supervisory standards, these additional requirements are more than offset by the opportunity to bring many marginalized LMI consumers into the formal banking system and provide a pathway for these individuals to obtain access to credit.

Data points that demonstrate the features associated with a bank's deposit products are specifically designed to meet the financial needs of LMI consumers (e.g., lower fees and transaction costs, the absence of overdraft penalties, minimal monthly balance requirements, and low-cost check cashing services, etc.) and are not predatory or harmful would be most beneficial. In addition, data points that show how a deposit product provides a pathway to other bank products such loans or other forms of credit would be highly desirable. Information on usage rates through mobile and online channels as well as via ATMs among LMI consumers or by consumers in LMI census tracts would be important to gather. This data would need to be compared to the total number of LMI people and/or census tracts in an AA to determine how well a bank's deposit products are serving the needs of underserved populations and communities. Collecting this type of data will potentially require addressing privacy and/or personal data concerns.

Question 30. Are large banks able to provide deposit product and usage data at the assessment area level or should this be reviewed only at the institution level?

This question is confusing as the Board has reviewed thousands of CRA examination reports which could shed light on the ability of large banks to provide deposit product and usage data at the AA level rather than the institution level. It would be preferable to review such data at the AA level assuming it is feasible for banks to provide it.

Question 31. Would it be beneficial to require the largest banks to provide a strategic statement articulating their approach to offering retail banking products? If so, what should be the appropriate asset-size cutoff for banks subject to providing a strategic statement?

There could be a benefit to encouraging the largest banks to provide a strategic statement that describes their approach to offering retail banking products. One option might be to make this an optional rather than a mandatory requirement for banks over a certain size threshold (say $10 billion) and/or those that wish to provide more information on how they are offering retail banking products to complement or augment their quantitative data measures. Assuming these statements are part of a bank's public CRA file, they might capture best practices that could be shared with and replicated by peer institutions.

Question 32. How should the Board weight delivery systems relative to deposit products to provide a Retail Services Subtest conclusion for each assessment area? Should a large bank receive a separate conclusion for the delivery systems and deposit products components in determining the conclusion for the Retail Services Subtest?

In the interest of transparency, a bank should receive a separate conclusion for its delivery systems and its deposit products when determining the conclusion or rating for the Retail Services Subtest. As to the specific weightings, we concur with the Board that delivery systems are fundamental to providing access to banking products and services for LMI consumers and communities. Therefore, the systems component should carry more weight than the deposit product component when determining the Retail Services Subtest rating. We also agree that consideration of a bank's business model (traditional, internet, or hybrid bank) and performance context should be factored into how an institution's branch distribution, branch-related services, and non-bank delivery channels are individually weighted. This is an area where additional examiner guidance would be extremely helpful.

Section VI – *Retail Lending Subtest Definitions and Qualifying Activities*

This section discusses updating and clarifying certain aspects of Retail Test qualifying activities, including the designation of major product lines, the evaluation of consumer loan products, the definitions of small business and small farm loans, and the consideration of retail activities conducted in Indian Country.

Question 33. Should the Board establish a major product line approach with a 15 percent threshold in individual assessment areas for home mortgage, small business, and small farm loans?

Question 34. Would it be more appropriate to set a threshold for a major product line determination based on the lesser of: (1) the product line's share of the bank's retail lending activity; or (2) an absolute threshold?

To strengthen the evaluation of retail lending activities, the Board proposes to define a major product line in an assessment area by establishing a specific threshold for a bank's home mortgages, small business, and small farm loans. In the ANPR, the Board suggests setting the threshold at 15 percent of the total dollar amount of lending for each product in a given AA. This approach has merit but needs to account for the difference in lending volume across banks of different sizes as well as across different loan products. For large banks, a 15 percent may be appropriate if it is making roughly similar amounts of different types of retail loan products based on dollar amount. However, if an institution is making many more mortgage loans than small business loans, or if the dollar value of these two loan products vary significantly, a two-pronged approach to ensuring all major product lines are included in the evaluation process may be a better option. For this reason, the approach outlined in Question 34 where the threshold for a major product line would be set at the lesser of: (1) the product line's share of the bank's retail lending activity; or (2) an absolute threshold would be preferable. This approach would also be well suited for smaller banks which may provide a retail loan product in several assessment areas but should only have this product evaluated as major product line in a given AA. A dollar-based threshold may not capture this lending as a major product line, but one based on loan count would.

Question 35. What standard should be used to determine the evaluation of consumer loans: (1) a substantial majority standard based on the number of loans, dollar amount of loans, or a combination of the two; or (2) a major product line designation based on the dollar volume of consumer lending?

Consumer loans are essential to helping LMI people and underserved communities fully participate in the mainstream economy and build wealth. These loans should receive a major product line designation based on the dollar volume for large banks and an absolute number of loans for smaller institutions. In addition, examiners should consider various product features, such as the fees, terms, and costs associated with consumer loan products to ensure that these products are safe, affordable, and appropriate for LMI consumers. Any evidence of abusive, predatory, or irresponsible lending practices should be factored into the CRA evaluation and ultimately reflected in the Retail Subtest conclusion.

Question 36. Should consumer loans be evaluated as a single aggregate product line or do the different characteristics, purposes, average loan amounts, and uses of the consumer loan categories (*e.g.*, motor vehicle loans, credit cards) merit a separate evaluation for each?

Consumer loans should be evaluated based on the underlying type of loan as proposed in the ANPR. In other words, CRA exams should assess auto loans, credit card loans and other secured and unsecured consumer loans separately reflecting the different characteristics, purposes, average loan sizes, and uses of these individual loan products. This approach will enable examiners to determine if a bank is fulfilling its affirmative responsibility to meet the credits needs of *all* the communities it serves, especially LMI and communities of color.

Question 37. Should the Board continue to define small business and small farm loans based on the Call Report definitions, or should Regulation BB define the small business and small farm loan thresholds independently? Should the Board likewise adjust the small business and small farm gross annual revenues thresholds? Should any or all of these thresholds be regularly revised to account for inflation? If so, at what intervals?

The Board should continue to define small business loans based on the Call Report definition. As noted in CRF's comment letter to the OCC and FDIC on their Joint Notice of Proposed Rulemaking regarding CRA,[29] raising the size threshold for a small business loan above $1 million level could discourage small dollar lending to truly small firms further reducing access to credit for the businesses that already face significant challenges when seeking a loan. According to the Federal Reserve's 2019 Small Business Credit Survey of Employer Firms, 43% of the firms applied for financing in the prior 12 months, and of those 57% sought $100,000 or less. Furthermore, 92% of the firms applying for financing were seeking less than $1 million.[30] Given the strong demand for loans of $1 million or less, it would be counterproductive to increase the size of a small business loan. Moreover, research conducted the Association of Enterprise Opportunity (AEO) documents that 11.2 million or 43% of small businesses are located in low-income communities.[31] These small businesses are powerful economic engines in their communities and more than 2 million seek credit every year. With the strong demand for credit and particularly, for smaller dollar loans among small businesses in LMI communities and among underserved small business owners, it would be inappropriate to increase the size threshold for small business loans.

Similarly, increasing the gross annual revenue threshold for small businesses is unwarranted and would make it easier for banks to meet their CRA obligations by directing loans to larger businesses at the expense of smaller firms. Based on data reported by the Consumer Financial Protection Bureau (CFPB), the vast majority of small businesses have annual receipts under $1 million with about 20 million firms (76%) with annual receipts of under $100,000.[32] If an additional 5.2 million (19%) with receipts of between $100,000 and $999,999 are combined with the 20 million firms (with receipts of less than $100,000), these two categories account for 95% of all businesses in the United States.[33] Raising the revenue size for small businesses would encourage banks to target their small business lending activities to these larger businesses, when the majority of small businesses in this country have annual revenues of less than $1 million. The revenue data on small businesses from the CFPB does not support adjusting the gross annual revenue of small businesses included in the CRA criteria. Some have suggested indexing the small business revenue threshold to inflation, however, because so many businesses in this country remain quite small, as measured by

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[29] Community Reinvestment Fund, USA Comment Letter to the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation on Community Reinvestment Act Joint Notice of Proposed Rulemaking – Docket ID OCC-2018-0008, March 20, 2020, pgs. 13-14.

[30] "Small Business Credit Survey: 2019 Report on Employer Firms," Federal Reserve Banks, https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/sbcs-employer-firms-report.pdf

[31] Association of Enterprise Opportunity, The Big Picture – A Larger View of the Small Business Market, 2014, pg. 8; https://aeoworks.org/wp- content/uploads/2019/03/the-big-picture.pdf

[32] Consumer Financial Protection Bureau (CFPB), *Key Dimensions of the Small Business Lending Landscape*, p. 10, May 2017, https://www.consumerfinance.Governor /data-research/research-reports/key-dimensions-small-business-lending-landscape/

[33] Ibid.

revenue and number of employees, a more reasonable approach to increasing the revenue threshold would be to consult and align with data collected by the CFPB and the Small Business Administration.

Question 38. Should the Board provide CRA credit only for non-securitized home mortgage loans purchased directly from an originating lender (or affiliate) in CRA examinations? Alternatively, should the Board continue to value home mortgage loan purchases on par with loan originations but impose an additional level of review to discourage loan churning?

Question 39. Are there other alternatives that would promote liquidity by freeing up capital so that banks and other lenders, such as CDFIs, can make additional home mortgage loans to LMI individuals?

CRF believes secondary markets play a vital role in providing liquidity and promoting increased loan originations. We pioneered the creation of a secondary market for community development assets that freed up a substantial amount of capital for new lending and investing activity in LMI and underserved communities. Selling home mortgage loans offers banks the opportunity to make new loans in LMI communities and thus has a positive benefit if done in a responsible fashion. Nevertheless, reports of banks repeatedly selling the same mortgage loan made to LMI borrowers or in LMI communities – also known as churning – need to be addressed. Allowing a bank to receive CRA credit for a mortgage loan that has been sold or securitized once makes sense and should be permitted. However, loans that are sold multiple times, especially those made in LMI tracts or to LMI people, should *not* be eligible for CRA consideration. We do not favor limiting CRA credit to non-securitized mortgage loans purchased directly from an originating lender (or affiliate) in CRA examinations. However, the Board should implement procedures to discourage loan churning. Given CRF's experience and history of purchasing and securitizing community development assets, we will continue to explore and share opportunities to create additional liquidity for CDFIs in a variety of asset classes.

Question 40. Should CRA consideration be given for retail lending activities conducted within Indian Country regardless of whether those activities are located in the bank's assessment area(s)?

Question 41. Should all retail lending activities in Indian Country be eligible for consideration in the Retail Lending Subtest or should there be limitations or exclusions for certain retail activities?

CRA consideration should be given for retail lending activities conducted within Indian Country regardless of whether those activities are located in the bank's assessment area(s). Individuals and families living in Indian Country experience some of the highest rates of poverty in this country. The official poverty rate on reservations is 28.4 percent, compared with 12.7 nationally. About 36 percent of families with children are below the poverty line on reservations, compared with 9.2 percent of families nationally.[34] These figures reflect absolute poverty rates as determined by the US Census. Some reservations in Washington, California, Wisconsin, Michigan, North Dakota, South Dakota, Arizona, and New Mexico fare worse, with more than 60 percent of residents living in poverty.[35] According to research by Randall K.Q. Akee and Miriam Jorgensen, the average distance from the center of a tribal reservation to the nearest bank is 12.2 miles and the average distance to the nearest ATM is 6.9 miles. Those who live on tribal reservations may have to travel more than 60 miles to reach the nearest bank or ATM. In contrast, the average distance for those not living on a tribal reservation must travel approximately 0.01 miles to reach an ATM.[36]

Without enhanced access to bank loan products and services, many residents of Indian Country will never be able to achieve their financial or personal goals. Reservations remain banking deserts that simply do not attract CRA activity or resources. To begin to reverse the situation, there must be strong incentives for banks to lend, invest and provide services in Indian Country. This is a good first step.

As Governor Brainard noted in a recent speech, "Native small businesses struggle to access bank capital even during normal economic times. Native-owned small businesses also struggle to access CRA-motivated loans. From 2014 to 2018, the total dollar amount of CRA small business and small farm lending per capita in majority-Native American or Alaska Native census tracts was less than half of what it was in majority-non-Hispanic White areas."[37] Given the exceptionally low level of CRA activity in Indian Country, all retail lending activities in these areas should be eligible for consideration in the Retail Lending Subtest with the caveat, that no lending activities deemed by examiners to be abusive or predatory in nature, or involving loan products with unscrupulous features or characteristics, such as hidden fees, excessive costs, or terms that undermine the borrower's credit, should be given CRA credit. The Board could re-examine this blanket CRA consideration of all retail lending activities if the economic conditions in Indian Country dramatically improve.

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[34] National Center for Education Statistics (2008). *Statistical Trends in the Education of American Indians and Alaska Natives.* Washington, DC: US Department of Education.
[35] *US Census Bureau (2000). US Census FactFinder. Washington, DC: US Census Bureau.*
[36] Native-Owned Banks and Credit Unions: Serving the Underserved; February 5, 2019; Native American Financial Services Association; https://nativefinance.org/news/native-owned-banks-and-credit-unions-serving-the-underserved/
[37] Governor Lael Brainard, *Modernizing and Strengthening CRA Regulations: A Conversation with the National Congress of American Indians*, November 2020, https://www.federalreserve.gov/newsevents/speech/brainard20201110a.htm; Federal Reserve Board staff analyzed annually reported CRA Small Business and Small Farm loan data submitted by banks at the tract level and combined it with demographic data from the American Community Survey 2018 5-Year Survey.

Section VII - *Community Development Test*

This section describes the two subtests of the proposed Community Development Test: a Community Development Financing Subtest and a Community Development Services Subtest. The Board proposes a metrics-based approach to evaluating community development financing activities that is transparent, predictable, and tailored to the community development needs and opportunities within an assessment area. For the Community Development Services Subtest, the Board proposes evaluating community development services in a way that better recognizes the value of qualifying volunteer activities, especially in rural communities.

Question 42. Should the Board combine community development loans and investments under one subtest? Would the proposed approach provide incentives for stronger and more effective community development financing?

We believe the Board should maintain separate subtests for community development loans and investments rather than combining them into a single subtest. This approach would preserve incentives for banks to engage in both types of community development financing. However, we acknowledge that having separate tests for community development lending and investing may inadvertently encourage a bank seeking to improve its investment test performance, to structure a financing as an investment when a loan would be more appropriate for the project. For this reason, there may be merit in combining the two subtests into a single subtest while requiring a bank to make *both* community development loans and investments to provide banks with more flexibility to offer the financing that is most appropriate to the needs of their local communities and still receive CRA consideration. Individual volume (both dollars and units) of CD loans and CD investments could continue to be reviewed by examiners to catch any anomalies. This approach would prevent banks from engaging exclusively in community development lending activities and ignoring qualified investments that might be needed in a community by removing unintended inducements in the current framework that encourage banks to choose one form of community development financing over another. The Board should not prescribe specific thresholds for each of these activities as community needs and the capabilities of individual banks should determine the volume of CD lending and investing.

Counting community development loans during the review period, but not those held on balance sheet from prior review periods, is inconsistent with the treatment of qualifying investments, and may discourage a bank from making patient longer-term loans that offer more impactful community benefits.[38] Examiners could monitor banks to determine if an institution is relying too heavily on loans or investments booked in prior evaluation periods to the detriment of new originations. Placing community development loans on par with investments makes sense and will create incentives for banks to provide patient capital that is desperately needed.

[38] Federal Reserve Board of Governors, Community Reinvestment Act: Advance Notice of Proposed Rulemaking, Vol. 85 No. 202, October 19, 2020, pgs. 66437-66438.

Question 43. For large retail banks, should the Board use the ratio of dollars of community development financing activities to deposits to measure its level of community development financing activity relative to its capacity to lend and invest within an assessment area? Are there readily available alternative data sources that could measure a bank's capacity to finance community development?

Yes, the Board should use the ratio of the dollar amount of community development financing activities to deposits to the measure the capacity of a large retail bank to engage in community developing financing activity in a given assessment area. This is the most appropriate measure for these banks, and we are not aware of other alternative data sources. The ANPR addresses concerns that a dollar-based metric would provide incentives for banks to seek larger financing opportunities that may not be as responsive to local community needs as smaller transactions by complementing the use of the CD financing metric with a qualitative review to capture the responsiveness and impact of smaller dollar financings.

Question 44. For wholesale and limited purpose banks, is there an appropriate measure of financial capacity for these banks, as an alternative to using deposits?

In the case of wholesale and limited purpose banks, assets would be the most suitable measure of financial capacity in place of deposits. Using the absolute dollar amount of CD financing activity has little meaning without a basis for comparison.

Question 45. Should the Board use local and national benchmarks in evaluating large bank community development financing performance to account for differences in community development needs and opportunities across assessment areas and over time?

The Board has constructed a thoughtful approach to using local and national benchmarks in evaluating large bank community development financing performance to assign a Community Development Financing Subtest conclusion. The local benchmark would include the average dollar value of a bank's local community development loans and investments as compared to the average dollar value of its local deposits. This benchmark would be "tailored" to local conditions based on the underlying data reflecting economic and demographic characteristics, the availability and capacity of community development financing partners, the stage of the local business cycle, and the presence of other financial institutions.[39] The Board is proposing to develop two national benchmarks: one for metropolitan areas and one for non-metropolitan areas, as these two geographies exhibit different levels of community development financing activities. The numerator and denominator for this comparator would be based on average total CD financing and deposits at the national level. Like the local benchmark, the national benchmark would factor in

[39] Ibid, pg. 66440.

economic conditions and business cycle taking place across the country. As noted in the ANPR, there could be significant variations in local benchmarks due to vastly different patterns of community development financing. While the Board has crafted a sound approach, they have not addressed the underlying question of how they intend to implement these benchmarks when evaluating a bank's CD financing performance. See Question 46 below for more discussion of this issue. How these benchmarks are put into practice will determine their usefulness in evaluating and advancing community development financing.

Question 46. How should thresholds for the community development financing metric be calibrated to local conditions? What additional analysis should the Board conduct to set thresholds for the community development financing metric using the local and national benchmarks? How should those thresholds be used in determining conclusions for the Community Development Financing Subtest?

Local and national benchmarks should be used to guide the development and implementation of performance thresholds for the community development financing metric. However, given the lack of robust data on CD financing, and the importance of this data to calibrating performance thresholds appropriately, we concur with the approach proposed by the Board to establish a "satisfactory" threshold (using some combination of the local and national benchmarks yet to be determined) for each assessment area that would serve as a guide to assist examiners in determining ratings until sufficient data becomes available and a rigorous analysis can be conducted ensuring that the threshold levels established are appropriate and realistic. We would encourage the Board to explore a variety of options as to how thresholds for the community development financing metric could be calibrated to local conditions and how thresholds based on national and local benchmarks could be used to determine conclusions for the Community Development Financing Subtest. Perhaps a series of stakeholder roundtables or an additional request for comment would provide useful input into this process.

Question 47. Should the Board use impact scores for qualitative considerations in the Community Development Financing Subtest? What supplementary metrics would help examiners evaluate the impact and responsiveness of community development financing activities?

Impact scores offer a valuable and effective way to include qualitative consideration in the Community Development Financing Subtest. According to the Board's proposal, examiners would assign an impact score ranging from 1 to 3 (with 3 being the highest) to each bank community development financing activity. The score would reflect the examiner's assessment of the activity's impact on the local community. We assume the impact score would consider long standing CRA qualitative criteria of responsiveness, innovation, and complexity. In addition, as discussed in Question 42, while CD loans and investments would be combined in this subtest, assigning a score to each activity would recognize the impact of individual loans or investments that are particularly well suited to the needs of the community. Unlike activity-based multipliers, impact scores would not have to be routinely recalibrated because they are based on the individual financing activity. Moreover, multipliers can incent banks to pursue a specific type of financing activity that may not address the greatest need in a community at a given time, but which bring increased CRA credit. Finally, impact scores add a quantitative component to a qualitative assessment in keeping with the goal of increasing transparency, clarity, and consistency in the new CRA framework.

Many stakeholders, including CRF, have emphasized the value of performance context to ensure qualitative factors are reflected in CRA exams. There is room to improve performance context data by tapping the resources of the Federal Reserve System which has access to and collects detailed information on communities across the country as well as having the staff expertise to conduct further analyses that could bring significant insights to such data. Actively soliciting public comments on specific community needs could also strengthen performance context.

Gathering and vetting supplementary metrics to evaluate the impact of community development financing activities should be an on-going effort by the Board and should reflect the development of new products by banks in response to needs they perceive in LMI communities and among LMI borrowers.

Question 48. Should the Board develop quantitative metrics for evaluating community development services? If so, what metrics should it consider?

Yes, coupled with a strong qualitative evaluation, the Board should develop appropriate quantitative metrics for evaluating community development services to enhance the evaluation process. Being able to compare a bank's performance on the Community Development Services Subtest would bring greater rigor and recognition to the value of these services to local communities, especially LMI and rural areas. As noted in the ANPR, community development services often promote partnerships that build capacity and foster the growth of the community development ecosystem. Calculating the ratio of community development services hours to the number of bank employees offers a reasonable approach to standardizing a metric for CD services that can be used to compare a bank's performance against an industry aggregate as well as its peers. On the qualitative side, a bank's CD services should be evaluated in light of performance context to determine how responsive these services are to addressing gaps and needs in the local community.

Question 49. Would an impact score approach for the Community Development Services Subtest be helpful? What types of information on a bank's activities would be beneficial for evaluating the impact of community development services?

As in the Community Development Financing Subtest, an impact score would be helpful in evaluating a bank's community development services by providing a standardized quantitative component to a qualitative evaluation. A bank could submit a variety of information demonstrating how its activities have a positive impact on the community(ies) it serves. The ANPR includes examples of relevant data points such as the number of clients in financial education classes who opened a bank account or a description of how a banker's service on the board of directors of a local organization supported the creation of a new small business lending program. The Board could consider collecting redacted examples of information about CD services submitted by banks that other institutions could access. As noted in Question 49, the criteria for evaluating the impact of CD services should reward services that demonstrate responsiveness, innovation, and complexity in addressing the credit needs of the community(ies) a bank serves, especially LMI communities and LMI people.

Question 50. Should volunteer activities unrelated to the provision of financial services, or those without a primary purpose of community development, receive CRA consideration for banks in rural assessment areas? If so, should consideration be expanded to include all banks?

Rural assessment areas present fewer opportunities for banks to engage in community development services. The Board is considering revising the definition of CD services to include a wider range of volunteer activities that support or address important community needs. Revising the range of qualifying community development services in rural assessment areas to include a bank's volunteer activities that have a primary purpose of community development, but do not use the employee's technical or financial expertise seems reasonable. Activities with a primary community development purpose are determined by assessing whether a majority of those served are LMI individuals or communities, small businesses, or small farms, and/or certain distressed or underserved rural geographies.

The Board is also proposing to expand consideration of activities in rural areas that do not have a primary purpose of community development but address "general community needs." The ANPR contains no definition or standard of what constitutes "general community needs" making it difficult to determine which volunteer activities would qualify. The Board should not expand consideration of activities that meet "general community needs" until it clearly defines CD services that meet this criteria. Making an exception without an explicit definition could result in banks receiving consideration for CD services that are not aligned with the intent and the core purpose of the CRA.

Question 51. Should financial literacy and housing counseling activities without regard to income levels be eligible for CRA credit?

Under no circumstances should financial literacy and housing counseling activities without regard to income levels be eligible for CRA credit. A similar proposal was included in the OCC's and the FDIC's Joint Notice of Proposed Rulemaking on the Community Reinvestment Act published last year. Eliminating all income restrictions would remove the intended focus of CRA on LMI households who are significantly more likely to be under- or un-banked[40] and suffer from lower rates of homeownership and far less personal wealth. Failing to direct these services to those who need it most simply reinforces the systemic patterns of discrimination and redlining by denying LMI and families of color the educational resources that could begin to improve their access to credit.

Section VIII - *Community Development Test Qualifying Activities and Geographies*

This section discusses proposals for clarifying and updating Community Development Test qualifying activities pertaining to affordable housing, community services, economic development, and revitalization and stabilization, and discusses updating how activities outside of a bank's assessment areas would be considered. The Board seeks to emphasize qualifying activities that support MDIs and Community Development Financial Institutions (CDFIs). In addition, the Board is considering how to treat community development activities outside of assessment areas to help address discrepancies between so-called CRA "hot spots"[41] and "deserts."[42] The Board seeks feedback on defining designated areas of need – for example, in Indian Country or in areas that meet an "economically distressed" definition – where banks could conduct community development activity outside of an assessment area. The Board also seeks feedback on approaches to increase the upfront certainty about what activities qualify for CRA credit, including a process for banks and other stakeholders to obtain pre-approval that a particular activity qualifies for consideration and publication of illustrative lists of qualifying activities.

Question 52. Should the Board include for CRA consideration subsidized affordable housing, unsubsidized affordable housing, and housing with explicit pledges or other mechanisms to retain affordability in the definition of affordable housing? How should unsubsidized affordable housing be defined?

The Board should include all three types of affordable housing – subsidized, unsubsidized, and housing with explicit pledges or mechanisms to retain affordability in the definition of affordable housing as detailed in the ANPR. This approach preserves the focus on housing that is affordable to LMI individuals and families or is likely to benefit them. Housing that has an explicit purpose of community development is also deemed to be affordable housing. The Board's proposed definition of subsidized affordable housing maintains the focus of such housing on serving LMI populations. With a growing need for more affordable housing, the Board is also considering a definition of unsubsidized affordable housing (also known as Naturally Occurring Affordable Housing) that would include housing

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[40] FDIC National Survey of Unbanked and Underbanked Households, 2017, pg. 19. https://www.economicinclusion.Governor/downloads/2017_FDIC_Unbanked_HH_Survey_Report.pdf

[41] CRA hot spots are areas where large numbers of banks concentrate CRA and other banking activities in the same, relatively small number of localities.

[42] CRA deserts are areas with little bank presence and corresponding lesser availability of banking products and services and community development activities.

where the rent is affordable, the units are either located in an LMI census tract or in geography where the median renter is LMI. We agree with this expanded definition as these two criteria would serve as a proxy for tenant income certification.[43] Alternatively, if available, rent rolls could be used to verify tenants are LMI households. Given the Board's concern that unsubsidized housing could become unaffordable, we support requiring explicit pledges or other mechanisms be included to ensure continued affordability.

Question 53. What data and calculations should the Board use to determine rental affordability? How should the Board determine affordability for single-family developments by for-profit entities?

The ANPR mentions several housing data sources that should be explored or examined more closely to see which source is best suited to determine rental affordability.

Question 54. Should the Board specify certain activities that could be viewed as particularly responsive to affordable housing needs? If so, which activities?

Yes, the Board should specify activities that would be viewed as particularly responsive to affordable housing needs. The ANPR identifies several activities that should be considered particularly responsive including rehabilitated affordable housing units with renewable energy facilities, energy efficiency or water conservation upgrades, housing that is close to public transportation as well as housing for homeless or other hard to serve populations.[44] Affordable housing located near a full-service grocery store offering fresh produce, or a community health center, as well as housing that advances environmental justice by removing health risks, like lead paint or proximity to hazardous waste sites, or that provides access to broadband for stable internet connectivity, should also be considered particularly responsive.

Question 55. Should the Board change how it currently provides *pro rata* consideration for unsubsidized and subsidized affordable housing? Should standards be different for subsidized versus unsubsidized affordable housing?

Currently, banks receive full CRA credit for mixed-income housing if 50 percent or more of the units are affordable for LMI households since this meets the primary purpose requirement that most of the benefits accrue to LMI families. *Pro-rata* CRA credit is awarded for affordable housing developments where less than 50 percent of the units are inhabited by LMI families. The Board suggests there may be other ways to allocate CRA credit to encourage integration of mixed-income housing projects in areas with lower poverty rates. While this would bring benefits to LMI families, the current approach to providing *pro rata* CRA credit is straightforward and easily calculated. Similarly,

[43] Federal Reserve Board of Governors, Community Reinvestment Act: Advance Notice of Proposed Rulemaking, Vol. 85 No. 202, October 19, 2020, pg. 66444.
[44] Ibid, pg. 66445.

offering different standards of CRA consideration for subsidized versus unsubsidized affordable housing could make the framework more complicated. Unless there are other factors to consider, retaining the current approach is the best option.

Question 56. How should the Board determine whether a community services activity is targeted to low- or moderate-income individuals? Should a geographic proxy be considered for all community services or should there be additional criteria? Could other proxies be used?

The approach proposed by the Board to determine whether a community service activity is targeted to LMI income individuals using both geographic proxy as well as building on existing proxies that banks use to demonstrate that 50 percent of participants served by a program or organization are LMI individuals is the most appropriate way to ensure that these activities serve the people and places aligned with the core purpose of the CRA. In addition to the examples listed in the ANPR, we support including recipients of federal disability programs and recipients of federal Pell Grants as suggested by the Board.

Question 57. What other options should the Board consider for revising the economic development definition to provide incentives for engaging in activity with smaller businesses and farms and/or minority-owned businesses?

We welcome the Board's interest in revising the definition of "economic development" to provide incentives to encourage activities supporting the smallest businesses and minority-owned firms. While the number of minority-owned businesses has grown rapidly in recent years, the Federal Reserve's own research reveals that small businesses owned by minorities have more difficulty than white-owned firms gaining approval of loans from banks.[45] The pandemic has only exacerbated the situation and laid bare the systemic discrimination minority-owned small businesses face when applying for credit to sustain or grow their operations. Activities supporting minority-owned firms and the very smallest businesses *should* be considered responsive and impactful under a new CRA framework to encourage more targeting of these small businesses. In addition, the Board should conduct further analysis (perhaps in consultation with Consumer Financial Protection Bureau) to better understand the ramifications of using a single gross annual revenue threshold of $1 million or less to define economic development activities and removing the option of using the SBIC or SBDC size standards. Specifically, would this change boost bank CRA activities with smaller and minority-owned firms and if so, at what potential cost?[46] In Question 37, we indicated our preference for maintaining the small business gross annual revenues threshold at $1 million, bringing the definition of economic

[45] Federal Reserve Banks, "Small Business Credit Survey: 2019 Report on Minority-Owned Firms" https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/20191211-ced-minority-owned-firms-report.pdf.

[46] Federal Reserve Board of Governors, Community Reinvestment Act: Advance Notice of Proposed Rulemaking, Vol. 85 No. 202, October 19, 2020, pg. 66447.

development in line with that of a small business. Moreover, we believe there is merit in having a simplified, transparent threshold.

Question 58. How could the Board establish clearer standards for economic development activities to "demonstrate LMI job creation, retention, or improvement"?

One way for the Board to establish clearer standards for economic development activities to "demonstrate LMI job creation, retention, or improvement" would be to look at how other federal agencies document similar outputs. One possible model the Board might wish to consider is how the Community Development Financial Institution's (CDFI) Fund requires its awardees to report how many jobs they have created or retained through their lending and/or investing activities by providing clear definitions of individuals deemed to be "low, very, or extremely-low income" along with specific guidelines as to what constitutes a full-time equivalent or part-time job, a direct or indirect job, and a job that is created or retained.[47] An exemption for the smallest businesses below a certain threshold (e.g., microenterprises) makes sense as these are sole proprietorships that do not create jobs.

Question 59. Should the Board consider workforce development that meets the definition of "promoting economic development" without a direct connection to the "size" test?

Yes, generally speaking workforce development activities that provide training or other services that enable LMI individuals to be hired or to gain skills that lead to employment should be considered to meet the definition of "promoting economic development" regardless of a connection to the "size" test. If workforce development leads to higher rates of employment for LMI individuals bringing financial resources to their families, and the local economy, the size of the business employing them should not be a qualifying factor.

Question 60. Should the Board codify the types of activities that will be considered to help attract and retain existing and new residents and businesses? How should the Board ensure that these activities benefit LMI individuals and communities, as well as other underserved communities?

The Board's desire to clarify the revitalization and stabilization subcomponent of the community development definition across three specific types of geographies is well founded. However, codifying the type of activities considered to help attract and retain existing and new residents and businesses may have unintended consequences. In particular, codification could inadvertently exclude activities the Board has not anticipated but which should be considered. This approach could drive banks to engage in activities that meet the exact specifications of the code

[47] U.S. Department of Treasury, Community Development Financial Institutions Fund, *CDFI Transactional Level Report Data Point Guidance*, August 2019, pgs. 31,33, & 36.

while discouraging them from more innovative activities not envisioned in the rubric. The ANPR articulates the objectives of clarifying what activities will receive CRA credit under this prong of the community development definition including giving greater weight to activities most responsive to community needs and that primarily benefit LMI individuals, providing more detail as to which activities qualify in targeted geographies, and simplifying the definition overall.[48] These objectives may be difficult to achieve by codifying these activities and potentially limiting how banks might revitalize and stabilized LMI and underserved communities. Rather than codification, the Board should consider using a set of criteria that exemplify the qualities and characteristics they are seeking in activities that attract and retain existing and new residents and businesses. This would provide needed flexibility for banks to engage in new and diverse activities that meet these criteria without excluding future innovative solutions. The added benefit of this approach is that it maintains the ability to tailor attraction and retention activities to the individual needs of the three targeted geographies – LMI census tracts, designated disaster areas, and distressed or underserved nonmetropolitan middle income census tracts. While many activities are appropriate and responsive to the needs of all three geographies, some address the particular circumstances of an individual geographic category. For example, designated disaster areas need emergency financial assistance for rebuilding efforts that is not applicable to other geographies. The Board could also utilize the illustrative list of CRA eligible activities it is considering (see Question 71) to include examples that further clarify the types of activities that attract and retain existing and new businesses and residents. The Board's criteria should contain specific guidance that attraction and retention activities must provide benefit to LMI individuals and communities, as well as other underserved communities.

Question 61. What standards should the Board consider to define "essential community needs" and "essential community infrastructure," and should these standards be the same across all targeted geographies?

Under the current CRA framework, definitions for "essential community needs" and "essential community infrastructure" vary across geographies. "For example, for underserved nonmetropolitan middle-income census tracts, current guidance describes activities that help meet essential community needs as including financing the construction, expansion, improvement, maintenance, or operation of essential infrastructure or community facilities."[49] While some stakeholders indicated this leads to confusion over which activities qualify, in our view, performance context should help define "essential community needs" and "essential community infrastructure" as individual communities have vastly different needs and priorities. Thus, these standards should not be the same across all targeted geographies but should be informed by specific circumstances. This approach could also address the concern that adopting a dollar-based metric for evaluating community development financing could incent banks to engage in larger dollar transactions to the detriment of smaller more impactful activities. Factoring in performance

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[48] Federal Reserve Board of Governors, Community Reinvestment Act: Advance Notice of Proposed Rulemaking, Vol. 85 No. 202, October 19, 2020, pg. 66448.
[49] Ibid.

context would allow examiners to consider the potential impact of smaller dollar financing activities for a community or geography to counterbalance the incentive associated with larger dollar transactions.

Question 62. Should the Board include disaster preparedness and climate resilience as qualifying activities in certain targeted geographies?

Yes, the Board should absolutely include disaster preparedness and climate resilience as qualifying activities in *all* targeted geographies and should garner additional CRA credit in those areas that have experienced or are likely to experience the devastating effects of climate change and natural disasters.

Question 63. What types of activities should require association with a federal, state, local, or tribal government plan to demonstrate eligibility for the revitalization or stabilization of an area? What standards should apply for activities not requiring association with a federal, state, local, or tribal government plan?

Government plans at the federal, state, local or tribal level can be excellent tools to for identifying activities that advance the revitalization or stabilization of an area. However, these plans reflect the judgement and objectives of those in government at a given time. There is no guarantee that the perspective and needs of *all* stakeholders were carefully considered and accounted for in these plans. CDFIs have worked in communities where there is strong alignment between government officials and local stakeholders ensuring that a plan is developed with full public participation and engagement. We have worked in other communities, where this has not been the case and a government plan may overlook or exclude the views and priorities of some community groups. Therefore, the Board should not require that bank financing activities be associated with a public sector revitalization or stabilization plan. However, activities that do align with a government plan and demonstrate positive community outcomes should be given additional consideration.

Question 64. Would providing CRA credit at the institution level for investments in MDIs, women-owned financial institutions, and low-income credit unions that are outside of assessment areas or eligible states or regions provide increased incentives to invest in these mission-oriented institutions? Would designating these investments as a factor for an “outstanding” rating provide appropriate incentives?

CRF strongly supports providing CRA credit at the institution level for investments in MDIs, women-owned financial institutions, and low-income credit unions (MWLIs) that are outside of AAs, eligible states, or regions to increase incentives to invest in these mission-oriented institutions. However, we are disconcerted to see that community development financial institutions (CDFIs) are not included in this proposed change to the CRA framework. As we have stated on numerous occasions in past comment letters,[50] CDFIs *should* be accorded the same CRA consideration as MWLIs since they perform the same function of providing equitable financial access to LMI and minority consumers and communities. Like their MWLI counterparts, CDFIs are dedicated to serving the credit needs of LMI areas and historically underserved markets. It could be argued that the CDFI Fund holds CDFIs to an even higher standard than that imposed on MWLIs as they are required to direct *at least* 60% of their lending and/or investing activities to their designated Target Markets of LMI people and/or places.

We acknowledge that the CRA statute did not include CDFIs because these mission-driven institutions simply were not a part of the financial landscape at the time it was enacted. Not until 1994 when the CDFI Fund was established and began to certify organizations that meet the criteria for this designation were CDFIs formally recognized. Since that time, CDFIs have developed an impressive track record spanning more than 25 years of delivering capital to some of the poorest areas across the country through more than 1,100 certified organizations. According to the Fund's latest update on data collected on the CDFI and NACA Programs' awardees for 2017, CDFIs target nearly 75 percent of their lending portfolio to serve low-income families, high poverty communities and underserved populations.[51] CDFI certification has become synonymous with a mission of community development and is recognized by public and private funders alike. To truly make credit available to LMI and minority communities and people, the Board should end this disparate treatment of CDFIs and place them on equal footing with their MWLI peers.

We also wish to point out that the Joint Notice of Proposed Rulemaking on the CRA Regulations[52] issued by the OCC and the FDIC did propose adding CDFIs to the criterion for ventures, including capital investments and loan participations, made by banks in cooperation with a MWLI if the activity helps to meet the credit needs of local communities in which such institutions are chartered.[53] The OCC and the FDIC recognized that CDFIs, like MWLIs, are dedicated to serving the credit needs of LMI areas and underserved markets and that they share a common purpose of expanding economic opportunities in these communities by providing access to financial products and services for local residents and businesses.

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[50] Community Reinvestment Fund, USA Comment Letter on the Advance Notice of Proposed Rulemaking: Community Reinvestment Act – Docket ID OCC–2018-008, November 19, 2018, pg. 10. Community Reinvestment Fund, USA Comment Letter to the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation on Community Reinvestment Act, Joint Notice of Proposed Rulemaking – Docket ID OCC-2018-0008, March 20, 2020.
[51] Community Development Financial Institutions Fund, *CDFI Program and NACA Program Awardees: A Snapshot in 2017*, May 2019, pg. 3.
[52] Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, "Joint notice of proposed rulemaking: Community Reinvestment Act Regulations," January 9, 2020, pg. 1234. https://www.Governor info.Governor /content/pkg/FR-2020-01-09/pdf/2019-27940.pdf.
[53] Ibid, pg. 1234.

Given the challenges so many LMI and minority consumers, we encourage the Board to harness the capabilities of as many mission-driven lenders as possible, especially CDFIs, to address systemic disinvestment in LMI and communities of color. One need look no further than the Paycheck Protection Program to see CDFIs standing shoulder to shoulder with their MDI colleagues. According to the SBA, "more than 430 CDFIs and MDIs across the country have made over 221,000 PPP loans for more than $16.4 billion."[54] CDFIs, along with MDIs, have played a pivotal role in delivering PPP loans and have been asked by both the Treasury Department and the Small Business Administration to step up again in the third round of this program to ensure underserved small business owners in historically disinvested communities gain access to this vital funding. This is clear recognition that CDFIs have a demonstrated track record of reaching the communities and people the CRA was enacted to serve. Investments in MWLIs *and* CDFIs should be considered as a factor for an "outstanding" rating.

Question 65. Should MDIs and women-owned financial institutions receive CRA credit for investing in other MDIs, women-owned financial institutions, and low-income credit unions? Should they receive CRA credit for investing in their own institutions, and if so, for which activities?

In addition to majority-owned financial institutions, MDIs and women-owned financial institutions should receive CRA credit for investing in other MDIs, women-owned financial institutions, low-income credit unions as well as CDFIs. The goal should be to build the capabilities and capacity of these institutions and CRA could provide a positive incentive for them to do so. We also support the Board's proposal for MDIs to receive CRA credit for reinvesting their retained earnings in their own institutions in activities that support their ability to serve their communities.[55]

Question 66. What additional policies should the Board consider to provide incentives for additional investment in and partnership with MDIs?

The Board should include examples in its illustrative list (see Question 71) that highlight partnerships or other forms of collaboration with MDIs as well as women-owned financial institutions, low-income credit unions and CDFIs to encourage additional CRA investments in all of these institutions and increase the flow of credit and financial services to LMI and minority communities and customers.

Question 67. Should banks receive CRA consideration for loans, investments, or services in conjunction with a CDFI operating anywhere in the country?

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[54] U.S. Small Business Administration, Paycheck Protection Program (PPP), Guidance on Accessing Capital for Minority, Underserved, Veteran and Women-Owned Business Concerns, January 6, 2021, pg. 1.
[55] Federal Reserve Board of Governors, Community Reinvestment Act: Advance Notice of Proposed Rulemaking, Vol. 85 No. 202, October 19, 2020, pg. 66449.

As discussed in Question 64, CRF strongly urges the Board to treat the activities of CDFIs similarly to those involving MWLIs. While granting automatic CRA consideration for community development activities with Treasury Department-certified CDFIs would certainly be a step in the right direction, it fails to recognize the full potential and capabilities of CDFIs, thus limiting their ability to help fulfill the purpose and mandate of the CRA. As the Board notes, placing CDFIs on par with MWLIs would also address the confusion associated with granting CRA credit for CDFI-related activities outside of a bank's AA(s) or the broader statewide or regional area that includes its AA(s).[56] Allowing banks to receive CRA consideration for CDFI activities nationwide would stimulate investment in these institutions and potentially bring private investment to CRA deserts where banks are not present. We are not concerned that allowing CDFIs to be treated as MWLIs will distract banks from serving the credit needs of their AAs as the Board's notes, "The proposed use of the community development financing metric and associated benchmarks to evaluate a bank's assessment area activities is intended to maintain a strong emphasis on serving local communities."[57]

Question 68. Will the approach of considering activities in "eligible states and territories" and "eligible regions" provide greater certainty and clarity regarding the consideration of activities outside of assessment areas, while maintaining an emphasis on activities within assessment areas via the community development financing metric?

The Board's approach to the treatment of activities in "eligible states and territories" and "eligible regions" will provide greater certainty and clarity regarding the CRA consideration of activities outside of assessment areas, while maintaining an appropriate emphasis on activities within assessment areas through the use of the community development financing metric. The current approach provides consideration for community development activities in a "broader statewide or regional area" that includes the bank's assessment areas *if* they have a purpose, mandate, or function of serving the bank's assessment area(s).[58] In addition, a bank may receive credit if it has been determined that the institution has been responsive to the credit and community development needs in its assessment area(s).[59] The latter requirement has led to uncertainty among banks and perhaps limited their interest in engaging in CD activities outside of their AAs. Allowing banks to receive CRA credit for community development activities outside their defined AAs that are within "eligible states and territories" and "eligible regions" builds on the current "broader statewide and regional area" approach under existing CRA guidance. The proposed expansion of geographic areas for CD activities could also promote investment in areas that lack a banking presence and help to reduce the incidence of CRA deserts. Pairing the proposed approach with the CD financing metric ensures banks will continue to focus on the credit needs of their AAs. The one issue the ANPR does not address is how these community development activities outside of bank's AA(s) will be weighed when determining CRA conclusions at the state and/or

[56] Ibid. pg. 66450.
[57] Ibid.
[58] Ibid, pgs. 66450 – 66451.
[59] *See* Q&A § .12(h)—6; CA Letter 14-2, p. 21.

regional levels. The Board should provide additional guidance on this issue and/or solicit input from stakeholders as needed.

Question 69. Should the Board expand the geographic areas for community development activities to include designated areas of need? Should activities within designated areas of need that are also in a bank's assessment area(s) or eligible states and territories be considered particularly responsive?

Yes, the Board should expand the geographic areas for community development activities to include designated areas of need. This proposed change would encourage CD activities deemed to be CRA deserts because they lack a banking presence and therefore cannot attract private investment. The five criteria outlined in the ANPR offer a good starting point to define which areas would qualify as areas of need. A possible addition to the targeted geographies designated by federal agencies could include Persistent Poverty Counties (PPCs)[60] which are utilized in a number of CDFI Fund programs. The Board should further develop the criteria for defining areas of need and seek additional comment before finalizing the proposed change. Activities within designated areas of need that are also in a bank's AA(s) or eligible states and territories should be considered particularly responsive (or perhaps receive a higher impact score) as this approach emphasizes the importance of banks of serving their assessment areas. The Board should update and publish a list of designated areas of need on an annual or bi-annual basis to ensure the list reflects areas that meet the criteria of this definition.

Question 70. In addition to the potential designated areas of need identified above, are there other areas that should be designated to encourage access to credit for underserved or economically distressed minority communities?

As noted in Question 69, the Board may wish to explore designating Persistent Poverty Counties (PPCs) as areas of need. PPCs are targeted in several CDFI Fund programs to promote increased CDFIs' lending and investing in these areas. Also, counties or census tracts where the majority of the population are people of color should be designated as areas of need to address on-going discrimination and systemic inequities in access to capital and credit.

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[60] Persistent Poverty Counties (PPCs) are defined as any county, including county equivalent areas in Puerto Rico, that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses, and the 2011-2015 5-year data series available from the American Community Survey of the Census Bureau or any other territory or possession of the United States that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990, 2000 and 2010 Island Areas Decennial Censuses, or equivalent data, of the Bureau of the Census. See *The 10-20-30: Defining Persistent Poverty Counties*, Congressional Research Service, Updated March 27, 2019.

Question 71. Would an illustrative, but non-exhaustive, list of CRA eligible activities provide greater clarity on activities that count for CRA purposes? How should such a list be developed and published, and how frequently should it be amended?

An illustrative, non-exhaustive list should be carefully developed and used as a tool but should not discourage banks from engaging in CRA eligible activities simply because they are not on the list. The list should also be used to derive a set of rules or principles that guide stakeholders in determining whether an activity qualifies for CRA credit. Specific examples would illustrate these general principles and provide clarification where needed. Both the list of illustrative examples and the general principles should be regularly reviewed – perhaps every six months in the beginning and then once a year thereafter. This information should be collected in an electronic database and made available to the public on the Board's website in a location that is easy to find. Revisions or additions to the list and the general principles should reflect input from banks and community-based groups. A set of proposed changes to the list should be published in the Federal Register with a request for public comment in much the same way the CRA Interagency Questions and Answers (Q's & A's) are currently updated. Given the natural overlap between the proposed dynamic illustrative list and the existing Q's & A's, the Board should clarify how these two sets of guidance will work together.

Question 72. Should a pre-approval process for community development activities focus on specific proposed transactions, or on more general categories of eligible activities? If more specific, what information should be provided about the transactions?

The Board should implement a two-pronged approach for pre-approving community development activities. The first prong or option would be to present general categories of eligible activities for pre-approval. In this case, Board staff would review the nature and characteristics of the proposed activities and provide a general pre-approval indicating that a particular type of activity would be eligible for CRA consideration. This pre-approval path would offer a shorter response time from the regulator because it would not require a detailed analysis of specific transactions. A second option would allow banks and/or community groups to request pre-approval of specific proposed transactions. This path would involve an in-depth review of proposed transactions including, but not limited to, a description and terms of the financing, how it meets the CRA definition of community development, how it addresses credit or capital needs of LMI and/or communities or borrowers of color as well as the potential benefits it will provide to these communities or populations. The second option will provide greater certainty that proposed transactions receive CRA consideration as a result of a more thorough analysis. However, this process will require significantly more time and potentially more resources than the first path. The Board will need to assess the volume of requests under each option to determine if this approach is manageable and effective. Both banks and community groups should be encouraged to utilize this two-pronged pre-approval process with the goal of spurring greater collaboration and fostering partnerships that lead to better community outcomes.

Section IX - *Strategic Plans*

In this section, the Board seeks feedback on proposed revisions to the strategic plan option for CRA performance evaluations to provide more clarity and flexibility about establishing strategic plans and the standards used to assess activities.

Question 73. In fulfilling the requirement to share CRA strategic plans with the public to ensure transparency, should banks be required to publish them on the regulatory agency's website, their own website, or both? Would it be helpful to clarify the type of consultation banks could engage in with the Board for a strategic plan?

Banks should absolutely be required to publish their CRA strategic plans on both the regulatory agency's website as well as their own website. The Board should seek to make CRA strategic plans widely available to the public and as easy as possible to locate. This approach will allow for the broadest dissemination of information related to CRA strategic plans so community groups can hold banks accountable for their intended activities and to provide models or examples for other banks to learn from and adapt for their own use. It would be helpful to clarify the type of consultation banks may engage in with the Board when developing a strategic plan with the caveat that this consultation does not assure that a plan will be approved but rather that the regulatory agency is responding to questions from the bank. Community groups should be permitted to engage in a similar dialogue with the Board to facilitate greater public input to the development of strategic plans. The more information, the more transparency, the better the CRA strategic plans will be. Finally, some stakeholders have recommended extending the public comment period on the grounds that 30 days is simply too short a period to allow for meaningful analysis of a proposed strategic plan.

Question 74. How should banks demonstrate that they have had meaningful engagement with their community in developing their plan, and once the plan is completed?

To demonstrate meaningful engagement with their community, a bank should describe the process used to publicize its draft CRA strategic plan and the various methods employed to engage community stakeholders, including but not limited to, establishing an advisory board composed of local stakeholders, convening public meetings, or conducting community outreach sessions to gather public comments and recommendations about the local credit needs. The bank's plan should include a comprehensive list of the comments and recommendations it received and a detailed approach to respond to this information. The Board should carefully assess the degree to which a bank's strategic plan reflects a clear understanding of the needs and priorities of the community(ies) it serves, especially those of LMI and communities of color, and how it will develop or provide financial products and services to meet these needs.

Question 75. In providing greater flexibility for banks to delineate additional assessment areas through CRA strategic plans, are there new criteria that should be required to prevent redlining?

It is unclear as to why the Board wishes to provide greater flexibility for banks to delineate additional AAs through CRA strategic plans. Is there a specific problem or issue that banks using the strategic plan option encounter and that necessitates additional flexibility? If so, the ANPR should articulate or clarify how the proposed flexibility would address the challenge these banks face. If this is not the case, we are confused as to why the Board would not apply the same standards for delineating AAs to *all* banks regardless of which CRA evaluation option or process they select. Applying different standards to banks choosing different evaluation methods could result in less comparability and consistency across CRA reports and ratings.

Question 76. Would guidelines regarding what constitutes a material change provide more clarity as to when a bank should amend their strategic plan?

The Board should develop and publish a set of guidelines defining what constitutes a material change that would require a bank to amend their strategic plan. There are a variety of circumstances or events that would require a bank to amend their strategic plan because of the significant impact on the overall operation of the institution. For example, a material change in the financial performance of a bank due to economic factors, such as the Great Recession or the Coronavirus pandemic. A change in the bank's structure related to an acquisition or merger could alter the type of lending and investing activities the institution conducts. Legal or regulatory enforcement action taken against the bank would warrant amendments to its strategic plan. Changes directly related to the goals or other aspects of the strategic plan would also be deemed a material change and require an amendment to this document. The Board should draft a list of proposed guidelines for public comment before finalizing what would constitute a material change for the purposes of a CRA strategic plan.

Question 77. Would a template with illustrative instructions be helpful in streamlining the strategic plan approval process?

A template that provides illustrative instructions would certainly help banks understand what a well-developed strategic plan would look like. Providing a guide that includes examples clearly outlining what the Board expects a plan to include could eliminate protracted discussions with the regulatory agency thus streamlining the approval process.

Section X – *Ratings*

In this section, the Board discusses updating the way in which state, multistate metropolitan statistical area (MSA), and institution ratings are reached, basing these ratings in local assessment area conclusions for the different subtests, as applicable. For example, the Board proposes assigning a bank's overall rating on the Retail Test by using a weighted average of each of the bank's assessment area-level conclusions. The Board believes it is appropriate to anchor a bank's overall rating in its performance in all of its local communities, and therefore proposes to eliminate the designation of full- and limited-scope assessment areas in the evaluation process. Certain activities outside of a bank's assessment area(s) would also be considered in determining overall ratings, such as a partnership with an MDI, which could be considered as part of a pathway to an "outstanding" rating. The Board also seeks to update the consideration of discrimination and other illegal credit practices in determining CRA ratings by adding violations of new laws and regulations that are related to meeting community credit needs.

Question 78. Would eliminating limited-scope assessment area examinations and using the assessment area weighted average approach provide greater transparency and give a more complete evaluation of a bank's CRA performance?

Under the current evaluation approach full-scope reviews use both quantitative and qualitative factors, while limited-scope reviews focus on quantitative factors and carry less weight in the overall ratings at each level. Because of the way full-scope reviews are selected, rural and smaller metropolitan areas are more likely to be assessed under a limited-scope review, receiving less emphasis in the examination process, and potentially attracting fewer CRA activities. Eliminating limited-scope reviews is a positive step but it is unclear whether the weighted average approach described in the ANPR will provide a truly comprehensive assessment of a bank's overall CRA performance. A weighting system based on loan and deposit volumes as proposed by the Board will continue to favor the performance in larger AAs over that in rural and smaller metro areas. If, as some have suggested, other measures, such as loans per capita or market share, are used as weighting criteria for AAs in these rural and smaller communities, such an approach might produce a more inclusive rating of bank's performance in all of its AA(s).

Question 79. For a bank with multiple assessment areas in a state or multistate MSA, should the Board limit how high a rating can be for the state or multistate MSA if there is a pattern of persistently weaker performance in multiple assessment areas?

The Board should absolutely limit how high an overall rating can be for the state or multistate MSA if there is a pattern of persistently weaker performance in multiple assessment areas. One concern voiced by stakeholders regarding the current approach to evaluating banks with multiple AAs is that strong performance in some AAs may compensate for or obscure poor performance in other AAs. This approach allows banks to ignore the credit needs of some (perhaps LMI or minority) communities while focusing on the needs of others and directly contradicts the intention of the CRA. We are pleased to see the example included in the ANPR suggesting that the state rating should not be higher than the rating achieved by a certain percentage of the number of AAs for a bank with multiple AAs in that state.[61] To determine what this percentage threshold should be, the Board should consider using the CRA Data Analytics Tables as they did when establishing the threshold for a presumptive "satisfactory" rating on the Retail Lending Test.[62]

Question 80. Barring legitimate performance context reasons, should a "needs to improve" conclusion for an assessment area be downgraded to "substantial non-compliance" if there is no appreciable improvement at the next examination?

It would be appropriate to downgrade an AA to "substantial non-compliance" if there has been no discernable improvement at the time of the next examination. A bank that receives a "needs to improve" rating during one examination cycle and then fails to address the concerns reflected in the prior exam is clearly not effectively responding to the credit needs of the communities it serves as required by the CRA.

Question 81. Should large bank ratings be simplified by eliminating the distinction between "high" and "low" satisfactory ratings in favor of a single "satisfactory" rating for all banks?

The Board is proposing to use four statutory ratings for banks of all sizes which would eliminate the distinction between "high and low satisfactory" performance for large banks at the state and multistate MSA levels. Reducing the number of ratings categories would result in the loss of valuable distinctions in CRA performance captured at both the subtest and the overall ratings levels. The current five ratings categories help large banks as well as community stakeholders evaluate the performance of individual institutions as compared to their peers. Receiving a "low satisfactory" rating may motivate banks to improve their CRA performance spurring greater lending, investing, and services in LMI and minority communities – a key goal of modernizing the CRA. Eliminating this distinction could potentially undermine what the Board is trying to achieve through the ANPR. With the vast majority of banks currently receiving a "satisfactory" rating, we are not persuaded that reducing the number of ratings categories would improve the CRA framework. Consistency and simplicity in a ratings framework are admirable however it should not come at the expense of sacrificing vital information gleaned through a more differentiated set of ratings, particularly for large institutions. The Board anticipates a more transparent and metrics-based approach would provide a more detailed perspective on performance but does not offer any additional evidence to support this point. Moreover, the ANPR does not present any industry or community stakeholder comments indicating that this change is needed.

Question 82. Does the use of a standardized approach, such as the weighted average approach and matrices presented above, increase transparency in developing the Retail and Community Development Test assessment area

[61] Federal Reserve Board of Governors, Community Reinvestment Act: Advance Notice of Proposed Rulemaking, Vol. 85 No. 202, October 19, 2020, pg. 66455.
[62] Ibid, pg. 66425.

conclusions? Should examiners have discretion to adjust the weighting of the Retail and Community Development subtests in deriving assessment area conclusions?

The Board proposes a standardized ratings approach for state, multistate MSA and institution ratings for the Retail Test and Community Development Test based on the weighted average of the bank's assessment area performance on both tests.[63] This approach utilizes two matrices included in the ANPR which provide examiners with a single option for overall Retail and CD Test conclusions except in a few circumstances where the conclusion could be one of two options. In these cases, the examiner is permitted to consider performance context (including, in the case of the CD Test, the relative need for CD financing and services in the AA) and to use his or her judgment to make a final determination.[64] The proposed approach places greater weight on the Retail Lending and the CD Financing Subtests which we believe is appropriate. It also strikes the right balance between standardization and maintaining a role for examiner discretion where needed. We favor calculating Retail Test institution ratings, by aggregating AA conclusions rather than state ratings (assuming all AAs are included, especially smaller rural AAs) to ensure banks are conducting retail activities in all their AAs, not just the larger ones. Transparency is enhanced by both the standardization incorporated in the Board's proposed approach and the instruction that specific factors informing the examiner's decision should be clearly articulated in the performance evaluation.[65]

Question 83. For large banks, is the proposed approach sufficiently transparent for combining and weighting the Retail Test and Community Development Test scores to derive the overall rating at the state and institution levels?

The ANPR states that Board is considering how to weight the Retail Test and Community Development Test to determine overall ratings at the state, multistate MSA, and institution levels for large retail banks. It presents one approach whereby the weighted average of the Retail Test and the CD Test are combined, assigning a 60 percent weight to the former, and a 40 percent weight to the latter to reflect the traditional emphasis placed on retail activities as the most significant aspect of CRA performance.[66] This approach is sufficiently transparent, and we agree with the weightings assigned to each test, however, the language of the ANPR suggests that the Board is considering this approach and there could, perhaps, be other options under review. Clarifying that the Board intends to pursue this approach would be helpful.

Question 84. Should the adjusted score approach be used to incorporate out-of-assessment area community development activities into state and institution ratings? What other options should the Board consider?

[63] Ibid, pg. 66455.
[64] Ibid, pg. 66456 & 66457.
[65] Ibid.

[66] Ibid, pg. 66458.

The adjusted score approach seems to be a reasonable approach to incorporating community development activities outside of AAs into state and institution ratings. However, the Board appears to favor averaging all AA ratings rather than state and multistate ratings as the basis for this adjustment. There are concerns that averaging all AA ratings could put CD activities outside of AAs at a disadvantage. Thus, it may be more appropriate to average state or multistate ratings or to develop an alternative method for incorporating out-of-assessment area CD activities into state and institution ratings.

Question 85. Would the use of either the statewide community development financing metric or an impact score provide more transparency in the evaluation of activities outside of assessment areas? What options should the Board consider to consistently weight outside assessment area activities when deriving overall state or institution ratings for the Community Development Test?

The use of *both* the statewide community development financing metric *and* an impact score could provide more transparency in the evaluation of activities outside of assessment areas as described in two scenarios below. First, the Board proposes to define a statewide CD financing metric as the total dollar amount of a bank's community development loans and investments in a state as compared to its total deposits from all AAs in the state. Could a modified approach offer a better solution? For example, if a bank is conducting CD activities in a state where it gathers a relatively small volume of deposits, will this metric be meaningful, or should another evaluation measure be used? If a statewide CD financing metric cannot be easily calculated for activities outside of AAs, perhaps an impact score based on information provided by the bank in combination with a review of performance context could be used in place of this metric. Both the score and the basis or rationale would be disclosed in the performance evaluation to assure transparency. Alternatively, the Board might consider how an impact score could be used to adjust the statewide CD financing metric if it could be done without adding undue complexity.

Question 86. For small banks, should community development and retail services activities augment only "satisfactory" performance, or should they augment performance at any level, and if at any level, should enhancement be limited to small institutions that serve primarily rural areas, or small banks with a few assessment areas or below a certain asset threshold?

For small banks opting into the metrics-based approach, community development and retail services activities should only be considered to elevate a "satisfactory" rating for the retail lending test to "outstanding" rather than augmenting performance at any level. This approach preserves the "primary emphasis on retail lending within the CRA evaluation."[67] Allowing banks to improve their CRA performance at any level through their community development activities and retail services could lead banks to reduce their focus on retail lending which is critical to an effective

[67] Ibid.

CRA framework. The ability to increase a “satisfactory” performance to an “outstanding” rating should be available to *all* small institutions not just those serving rural areas or small banks below a certain asset threshold.

Question 87. Should the Board specify in Regulation BB that violations of the Military Lending Act, the Servicemembers Civil Relief Act, and UDAAP are considered when reviewing discriminatory or other illegal credit practices to determine CRA ratings? Are there other laws or practices that the Board should take into account in assessing evidence of discriminatory or other illegal credit practices?

Violations of the Military Lending Act, the Servicemembers Civil Relief Act and the UDAAP (Unfair, Deceptive, or Abusive Acts or Practices) should be considered by the Board when conducting fair lending reviews and should be factored into CRA ratings. These violations clearly demonstrate that a bank is engaging in discriminatory and/or inappropriate credit practices that directly contradict the purpose and the intent of the CRA. The Board should also consider other laws such as the Americans with Disabilities Act which protect vulnerable populations from discriminatory and illegal credit practices. CRF is encouraged by the Board’s effort to align the criteria used to determine if a CRA rating should be downgraded with the Uniform Interagency Consumer Compliance Ratings System. Better alignment will strengthen the CRA framework by uncovering information about the “root cause, severity, duration, and pervasiveness of violations”[68] of discriminatory or illegal practices. This information should be shared with the public so they can identify and report such practices in the future.

Question 88. Should consideration for an outstanding rating prompted by an investment or other activity in MDIs, women-owned financial institutions, and low-income credit unions be contingent upon the bank at least falling within the “satisfactory” range of performance?

Question 89. Would it be helpful to provide greater detail on the types and level of activities with MDIs, women-owned financial institutions, and low-income credit unions necessary to elevate a “satisfactory” rating to “outstanding”?

We are pleased to see the Board considering ways to increase engagement with key mission-driven institutions, such as MDIs, women-owned financial institutions, and low-income credit unions (MWLIs). However, as explained in Question 64, CRF strongly recommends that CDFIs be included with these institutions since they serve the same purpose but simply were not envisioned at the time the statute was enacted. (See Question 64 for a full discussion of why CDFIs should be accorded the same treatment under the CRA as MWLIs).

CRF supports the careful use of the ratings framework to encourage banks to engage with MWLIs as well as CDFIs. The Board is considering making lending or investment activities with these institutions a factor to enhance the ratings

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[68] Ibid, pg. 66459.

for the Retail Test and the CD Test. These activities could be considered at any level (AA, state, multistate MSA, or for the institution). Activities outside of a bank's footprint would be accounted for when assessing the institution's performance. The Board is also considering using meaningful engagement with MWLIs as a criterion for elevating a bank's overall rating to "outstanding."[69]

To balance the benefits of greater engagement with MWLIs (and CDFIs) with the potential for ratings inflation, the Board should provide more detail as to how this incentive would be implemented. Specifically, the Board should define the type activities that would elevate a bank rating to "outstanding" and more importantly, the amount of activity that would merit a higher CRA rating. This incentive should be structured to benefit banks of all sizes to avoid favoring one group of institutions over another. Given the current universe of MWLIs, it is even more important that CDFIs be eligible for this incentive to allow as many banks as possible to benefit from this opportunity.

Section XI - *Data Collection and Reporting*

In this section the Board solicits feedback on potential revisions to data collection and reporting requirements. The Board is mindful of the potential tradeoff between the expanded use of metrics to provide greater certainty and consistency and the expanded need for data collection and reporting and has prioritized using existing data wherever possible. The Board has also prioritized approaches that would exempt small banks from new data collection requirements. In addition, the Board seeks feedback on deposits data options for large banks, and in particular for large banks with extensive deposit activity outside of the areas served by their physical branches. The Board seeks feedback on how to balance the certainty provided through the use of metrics in CRA performance evaluations with the potential data burden implications.

Question 90. Is it appropriate to rely on SOD data for all banks, a subset of large banks with multiple assessment areas based on business model or the share of deposits taking place outside of assessment areas, or only for small banks and large banks with one assessment area? What standards would be appropriate to set for business models or the appropriate share of deposits taking place outside of assessment areas, if such an approach is chosen?

It would appear that SOD data has some serious shortcomings which are most pronounced when used for large banks collecting a significant volume of deposits outside of the areas around their branches. The Board has proposed a comprehensive and thoughtful approach to modernizing the CRA framework. If new data is necessary to implement improvements to delineating AAs as well as the proposed metrics for the Retail Lending and Community Development Financing Subtests, then the tradeoff between minimizing the burden of new data collection is more than offset by the benefits of a clearer, more transparent, and consistent framework. New data collection requirements should be

[69] Ibid.

phased in over time. The first order of business would be for the Board to carefully study and publish guidance as to how large banks with multiple AAs or those gathering deposits outside their AAs should report on the location of deposits and the types of deposits to which this requirement would be applied. A transition period would be needed to allow large institutions to develop and install new systems capable of fulfilling new data collection protocols. Large banks with a single AA or small banks subject to only the retail lending test would continue to use SOD data until such time as the Board deemed it appropriate and not cost prohibitive for these institutions to collect deposit data in the same fashion as large institutions with multiple AAs. The data banks are required to collect *must* be aligned with and appropriate to the new evaluation framework for CRA modernization to be successful and effective.

Question 91. Is the certainty of accurate community development financing measures using bank collected retail deposits data a worthwhile tradeoff for the burden associated with collecting and reporting this data for all large banks with two or more assessment areas?

As noted in Question 90, the tradeoff of accurate and meaningful community development financing measures is fundamental to the proposed new rules for the CRA evaluation process. The goals of clarity, transparency, and consistency will be strengthened by the CD financing metric if relevant and accurate data are collected. Again, a phased-in approach with a reasonable transition period should be considered to ease the burden associated with collecting and reporting deposit data for large banks with multiple AAs.

Question 92. Which approach for retail lending data collection would provide the best balance between data collection burden and the transparency and predictability of CRA examinations for small banks that opt in to the metrics-based approach – using a sample of bank data drawn from each assessment area to generate the retail lending metrics, or the use of information maintained by a bank in a format consistent with its own internal operating systems?

Small banks that opt in to the metrics-based approach should be asked to use information they maintain that is consistent with the institution's internal operating system. This approach would enhance the transparency, completeness, and predictability of CRA evaluations while reducing the data collection burden.

Question 93. Are there other approaches to data collection that would benefit small banks and should be considered?

Banks should be able to submit CRA-related data via secure portals maintained by the Federal Reserve Board.

Question 94. What are the benefits and drawbacks of relying on examiners to sample home mortgage data for non-HMDA reporters and consumer loan data for all large banks, requiring banks to collect data in their own format, or requiring banks to collect data in a common Board prescribed format?

Banks should be encouraged to collect data in a common Board prescribed format to facilitate the standardization of this data that could be used to develop a publicly available database which would allow regulators and researchers to conduct more in-depth analyses of the home mortgage and consumer lending activities of banks. It might also serve as a tool for establishing additional metrics that banks could use to assess and compare their performance to that of their peers.

Question 95. Are the community development financing data points proposed for collection and reporting appropriate? Should others be considered?

A robust set of community development financing data points are essential to implement the revised CRA framework. As the Board notes, due to the lack of granular CD loan data or any CD investment data there is no aggregate CD data at the local level with which to develop the local benchmarks for the CD financing metric included in the proposed framework.[70] In addition to the data needed to create the CD financing metric (the annual number and dollar amount of CD loans and investments made, prior years CD loans and investments remaining on the balance sheet), the Board is proposing to collect (in a machine-readable format) the amount of each loan or investment (original or remaining), the area(s) benefitting, the CD purpose (affordable housing, etc.) and the type of investments (equity, mortgage-backed security, etc.). A subset of this data would be reported at some aggregate level.[71]

CD financing data should be collected by banks at the census tract, county, and assessment area level. This data should be made available to the general public so stakeholders can assess and hold banks accountable for their performance at each level. It would also be helpful to have grants broken out separately from investments as they serve different purposes and involve different levels of subsidy. Aggregating data according to the four pillars of community development (affordable housing, community services, economic development, and activities that revitalize and stabilize LMI census tracts) would provide useful insights about a bank's CD financing activities. Evaluating this information in light of performance context could highlight community credit needs that remain unaddressed. Similarly, providing annual data by geographical area will allow examiners and community stakeholders to evaluate a bank's performance in a timely manner as well as potentially identify areas that are underserved.

Question 96. Is collecting community development data at the loan or investment level and reporting that data at the county level or MSA level an appropriate way to gather and make information available to the public?

As noted in Question 95 above, community development data should be collected and reported at the loan or investment level as well as at the census tract and county level. This approach will provide the type of granular data needed to assess and hold banks accountable for their CRA performance. It is imperative to gather and report data at

[70] Ibid, pg. 66462.
[71] Ibid.

the census tract and county levels in order to identify underserved areas. Census tracts are crucial to identifying underserved urban areas that often align with communities of color. County level data collection and reporting are important for identifying underserved rural areas that may also be CRA deserts.

Question 97. Is the burden associated with data collection and reporting justified to gain consistency in evaluations and provide greater certainty for banks in how their community development financing activity will be evaluated?

It is not clear how burdensome the data collection and reporting requirements associated with the ANPR will actually be. In addition, as noted in Question 90, in order to implement the proposed framework, banks will need to provide more information on their CD financing activities. This will allow for more consistent evaluations of banks' CD activities as well as greater certainty as to how these activities will be viewed. If the CD test and CRA are to be strengthened additional, more granular data will be required. It is a necessary trade-off.

Question 98. Would collecting information in a Board-provided standardized template under the Retail Services Subtest be an effective way of gathering consistent information or is there a better alternative?

The Board should provide a standardized template for collecting data under the Retail Services Subtest to ensure data is collected in a consistent format. The ANPR contains a list of the necessary data related to both branch and non-branch distribution channels that should be included. Data on LMI use of account and deposit services as well as other services that are particularly responsive to the needs of LMI individuals and families should be captured as well. This data should be used to establish a database to inform comparative analyses of banks' retail service activities and future rulemaking.

Question 99. Possible data points for community development services may include the number and hours of community development services, the community development purpose, and the counties impacted by the activity. Are there other data points that should be included? Would a Board-provided template improve the consistency of the data collection or are there other options for data collection that should be considered?

A Board-approved template would improve consistency and standardization of data collection efforts related to community development services. Certified CDFIs are required to provide technical assistance (TA) services in conjunction with their financing activities such as homeownership counseling classes or business planning workshops. They collect a range of data points to document the provision of these services which may be relevant for purposes of the community development services test. For example, CDFIs often document the number of workshops or training classes they offer over the course of a year and the number of participants attending these educational offerings. They may also track the number of participants in these forums who access their credit products (such as a mortgage or business loan) and whether they become repeat customers using more than one of their financial products or services. CDFIs that serve consumers and offer credit building classes may track increases in their clients' credit scores to measure the effectiveness of their services.

Conclusion

We appreciate the opportunity to share our comments and recommendations on the Board's ANPR regarding the Community Reinvestment Act. CRF remains a strong and steadfast supporter of the CRA. We commend the Staff of the Federal Reserve Board for their commitment to improving and strengthening the framework that implements this seminal statute. We stand ready to work with the Board in its efforts to modernize the CRA and ensure it fulfills its core purpose as the financial landscape continues to evolve and our country works to rebuild in a more equitable and just fashion. Please do not hesitate to contact me with any questions regarding comments included in this letter.

Sincerely,

Frank Altman
Chief Executive Officer